TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]292

FREDERICK WESCHE, APPELLANT,

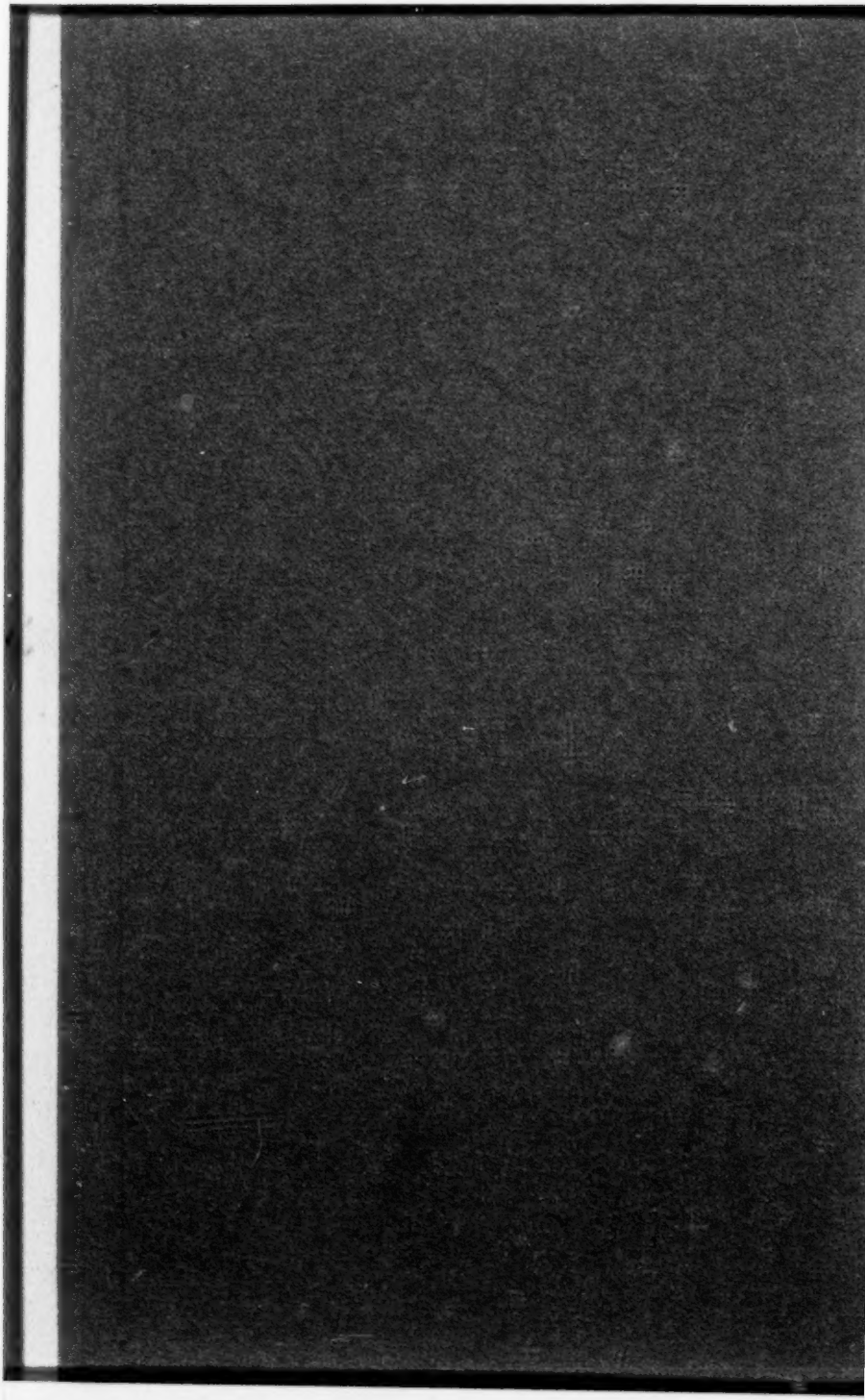
vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED MARCH 2, 1923.

(29,747)



(28,747)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 792.

FREDERICK WESCHE, APPELLANT,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

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Original Rule to Show Cause.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

FRANCIS P. GARVAN, as Alien Property Custodian, Petitioner, v. COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation, Respondent.	In Equity.
In the Matter of the Application of Francis P. Garvan, as Alien Property Custodian, in re: certain stocks, bonds, securities and money held by the respondent as the money and property of Helen J. von Schierholz, of Thuringen, Germany, an enemy.	

Rule to Show Cause.

On the petition of the Alien Property Custodian of the United States, duly verified and filed herein on the 11th day of September, 1920, and on the motion of the said petitioner;

IT IS ORDERED that the said Commercial Trust Company of New Jersey, respondent named herein, do forthwith convey, transfer, assign, deliver and/or pay to Francis P. Garvan, as Alien Property Custodian, all the money and other property described and set forth in the petition annexed

hereto, or do appear in this Court, at the place of holding said Court at Newark, on Oct. 4, 1920, on or before the twentieth day after service of this Order, then and there, by answer duly verified to show cause, if any there be, why it should not be required, by order of this Court, so to do, and why the petitioner should not have such other and further relief as in the premises he may be justly entitled to.

IT IS FURTHER ORDERED that service of this Order be made upon the said Commercial Trust Company of New Jersey by the United States Marshal for the District of New Jersey, by serving upon the President, or any other officer of said corporation, a true and correct copy of this Order, and of the said petition, duly attested by the Clerk of this Court.

Done on this 11th day of September, 1920.

JOSEPH L. BODINE,
U. S. District Judge.

DHS/D
8/26/1920

(Endorsed) Filed Sept. 11, 1920, at 11 o'clock A. M. George T. Cranmer, Clerk.

Original Petition of Custodian.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

FRANCIS P. GARVAN, as Alien Property Custodian,
Petitioner,

against

COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation,
Respondent.

In the Matter of the Application of Francis P. Garvan, as Alien Property Custodian, in re: certain stocks, bonds, securities and money held by the respondent as the money and property of Helene J. von Schierholz, of Thuringen, Germany, an enemy.

In Equity.

TO THE HONORABLE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NEW JERSEY:

Now comes Francis P. Garvan, as Alien Property Custodian, petitioning this Court, and as grounds for the relief prayed for hereinafter, says:

I.

Your petitioner is the Alien Property Custodian of the United States, duly appointed, qualified and

acting under the terms and provisions of the Act of Congress approved October 6, 1917, commonly known as the Trading with the Enemy Act, the amendments thereto, and the proclamations and executive orders issued thereunder. Your petitioner is the successor in office of A. Mitchell Palmer, as Alien Property Custodian, who resigned such official position on March 4, 1919, and who had previously been duly appointed, qualified and acting as such Alien Property Custodian. This proceeding is brought by the said Francis P. Garvan in his official capacity on behalf of the United States of America.

II.

The Commercial Trust Company of New Jersey, respondent herein, is a corporation incorporated under and pursuant to the laws of the State of New Jersey, having its principal place of business at 15 Exchange Place, Jersey City, Hudson County, State of New Jersey.

III.

On or about the 19th day of December, 1917, the Commercial Trust Company of New Jersey, respondent herein, acting under and pursuant to and in compliance with the terms and provisions of the said Trading with the Enemy Act, the amendments thereto and the proclamations and executive orders issued thereunder, and especially in compliance with section 7 (a) of said Act, executed a report, under oath, to the Alien Property Custodian, said report being signed and sworn to by Jay S. Perkins, Secretary and Treasurer of

said corporation, upon A. P. C. form No. 105, that the said corporation held certain stocks, bonds, mortgages, securities and money in trust for the joint account of Frederick Wesche, of Paris, France, and Helene J. Von Schierholz, of Plaue, Thuringen, Germany, to be delivered or paid to the said cestuis que trust upon the demand of either, or of the survivor of them. Said report is on file in the office of the Alien Property Custodian as Report No. 8393, and a copy of the same, containing a complete list of all the money and other property herein referred to is annexed hereto, marked Exhibit "A", and incorporated herein and made a part hereof.

IV.

On or about the 28th day of March, 1919, the said respondent corporation reported to your petitioner as the Alien Property Custodian, by telegraph, that it held for the benefit of the said cestuis que trust the further sums of $39,190.76 designated as a checking account, and $18,159.69 designated as a trust account.

V.

On or about the 19th day of June, 1918, A. Mitchell Palmer, as Alien Property Custodian, predecessor in office to your petitioner, acting under and pursuant to the authority vested in him by the said Trading with the Enemy Act, the amendments thereto and the proclamations and executive orders issued thereunder, after investigation, determined that the said Helene J. von Schierholz, of Thuringen, Germany, was an enemy within the purview and meaning of the said Act,

and thereafter required the said respondent corporation to forthwith convey, transfer, assign, deliver and/or pay over to him, as Alien Property Custodian, all said money and other property hereinbefore described, together with all interest accrued and collected upon the said money or other property, to be by him held, administered and accounted for according to law. The said demand was served upon the said Commercial Trust Company of New Jersey on or about the 8th day of July, 1918, by the Bankers Trust Company of New York by C. D. Anderson. A copy of the said demand, bearing the return of service endorsed thereon, is annexed hereto, marked Exhibit "B", and incorporated herein and made a part hereof.

VI.

On or about the 28th day of March, 1919, your petitioner, acting under and pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto and the proclamations and executive orders issued thereunder, further required the said respondent corporation to deliver and pay over to your petitioner, as Alien Property Custodian, the sum of $39,190.76 designated as a checking account, and the sum of $18,159.69 designated as a trust account, both of said sums being held subject to the demand of the said Helene J. von Schierholz, an enemy, and to convey, assign, deliver and pay over to your petitioner certain stocks, bonds, mortgages and securities listed in the said demand, together with all interest and income accrued and collected on any and all of the said money and other property. Service of said demand was made upon the said

Commercial Trust Company of New Jersey on or about the 17th day of April, 1919, by the Bankers Trust Company of New York, by Chas. E. Flynn. A copy of the said demand, containing a full and complete list of all the money and other property required to be conveyed, assigned, transferred and delivered to your petitioner, and bearing the return of service thereon, is annexed hereto, marked Exhibit "C", and incorporated herein and made a part hereof.

VII.

By virtue of the aforesaid determinations, requirements and demands, made and issued by A. Mitchell Palmer, as Alien Property Custodian, predecessor in office of your petitioner, and by your petitioner as Alien Property Custodian, your petitioner became and now is vested with all the beneficial interests in the said money and other property, and by virtue of the said Trading with the Enemy Act, the amendments thereto and the proclamations and executive orders issued thereunder, and the facts herein set forth, your petitioner is the only person entitled to the said money and other property, but the said Commercial Trust Company of New Jersey has failed and refused to recognize the rights, power and authority of your petitioner with respect to the said money and other property, and has failed and refused and continues to refuse to convey, transfer, assign, deliver and pay to your petitioner said money and other property, with interest thereon.

VIII.

This is a proceeding brought by your petitioner as Alien Property Custodian of the United States, pursuant to the provisions of Sections 24 of the

Judicial Code of the United States, by which the district courts of the United States have original jurisdiction over all suits of a civil nature at common law or at equity brought by the United States or any officer thereof, and under Section 17 of the Act of Congress, approved October 6, 1917, and known as the "Trading with the Enemy Act," by virtue of which, this Court has jurisdiction to make and enter all such orders and decrees and to issue such processes as may be necessary in the premises to enforce the provisions of said Act.

WHEREFORE YOUR PETITIONER PRAYS that this Court issue a rule, directed to the said respondent, commanding it, in the alternative, to convey, transfer, assign, deliver and/or pay to your petitioner, as Alien Property Custodian, the said money and other property hereinbefore described, with interest thereon accrued; or else, upon a day and at a place to be named in said writ to show cause, if any there be, why the relief herein prayed should not be granted, and for such other and futher relief as in the premises may seem meet and just.

ALIEN PROPERTY CUSTODIAN,
By
HENRY E. AHERN,
Managing Director of the office
of the Alien Property Custodian.

(SEAL)

ELMER H. GERAN,
United States Attorney Solicitor
for Francis P. Garvan,
as Alien Property Custodian.
B. J. W. ACTON,
Assistant U. S. Atty.

Original Petition of Custodian.

DISTRICT OF COLUMBIA,)ss.:

Personally appeared before me this 9 day of Sept. 1920, H. E. AHERN, who being by me duly sworn, says:

I am the duly appointed, qualified and acting Managing Director at the office of the Alien Property Custodian, and as such, in the absence or disability of Francis P. Garvan, the management and charge of said office are committed to the care of affiant; Francis P. Garvan, who as Alien Property Custodian is the petitioner in this cause, is not within the District of Columbia, nor with the jurisdiction of the District Court of the United States, for the District of New Jersey, and is not within reach of ordinary postal communication without great delay, which would be prejudicial to the interests of the petitioner and of the United States; I have read the foregoing petition and know the facts therein alleged to be true, except those stated to be alleged upon information and belief and as to those I verily believe the same to be true; I have signed the foregoing petition and affixed thereto the seal of the office of the Alien Property Custodian in my official capacity as aforesaid.

H. E. AHERN.

Subscribed and sworn to before me this 9th day of Sept. 1920.

ODEN B. GRAY,
Notary Public, D. C.
My commission expires Oct. 12, 1920.

(SEAL)
DHS/D
8/26/1920.

Exhibit A.

File No.....

ALIEN PROPERTY CUSTODIAN.
A. P. C. Form No. 105

Report of Property and Indebtedness Held by Executors, Trustees, or Other Persons Acting in a Like Fiduciary or Representative Capacity, Under Section 7(a), "Trading With the Enemy Act."

NOTICE.

This form is to be used only for the report of executors, administrators, guardians, committees, curators, private trustees, such as trustees under wills, deeds, and settlements, receivers, trustees in bankruptcy, assignees for the benefit of creditors, United States marshals, sheriffs, commissioners, and like officers holding property subject to court order under attachments, distress warrants, replevin or other proceedings, and all persons acting under trust agreements or under or pursuant to court order or proceedings, holding property in which an enemy or ally of enemy has or claims any interest.

PENALTY.

Failure to make this report to the Alien Property Custodian as provided by law (see extract of act below) is punishable by imprisonment for not more than ten years or fine of not more than ten thousand dollars, or both.

Exhibit A—Annexed to Petition of Custodian.

The time for the filing of any report which under the act was required to be filed on or before November 5, 1917, has been extended to and including December 5, 1917.

Pursuant to the provisions of section 7(a) of the "Trading with the enemy Act," the Alien Property Custodian hereby requires a written statement under oath containing all the particulars specified in this form.

INSTRUCTIONS.

(1) Read carefully all of this report form and instructions before beginning to make report. Write legibly, using typewriter where possible.

(2) PERSON.—The word "person" is defined by section 2 of the act as follows:

> "The word 'person,' as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic."

(3) THE PERSON WHOSE INTEREST IN AN ESTATE OR TRUST FUND (including indebtedness owed to him by the estate) MUST BE REPORTED HEREIN.—Report must be made of the property or interest in an estate or trust fund held by the person reporting in a fiduciary or representative capacity (other than a mere agency) of, for, or on behalf of (including any indebtedness owed to) any person who by the "Trading with the enemy

Act" is defined as an enemy or ally of enemy, or whom the person making this report may have reasonable cause to believe to be an enemy or ally of enemy.

(4) ENEMY.—For the purpose of this report, the word "enemy," as defined by section 2 of the act, includes the following:

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof."

ALLY OF ENEMY.—For the purpose of this report, the words "ally of enemy," as defined by section 2 of the act, include the following:

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business

within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof."

(5) If a person, even an American citizen, is resident within the territory of an enemy or ally of enemy, including that occupied by its military and naval forces, the estate or trust fund in which he has any interest must be reported.

(6) The term "enemy" or "ally of enemy," as used in this form, includes any person whom you may have reasonable cause to believe to be an enemy or ally of enemy.

(7) On October 6, 1917, the United States was at war with Germany; the allies of Germany were Austria-Hungary, Bulgaria, and Turkey.

(8) WHO MUST MAKE REPORTS, AND WHAT MUST BE REPORTED.—Reports must be made as required by the following paragraph of the act:

"Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy

and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the alien property custodian by written statement under oath containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen."

The Alien Property Custodian, acting under the authority vested in him by the President, including all power and authority to require lists and reports, has issued an order requiring a report of all property so held, and of all debts so owed, on February 3, 1917. If on February 3, 1917, the person reporting held any portion of the estate or trust fund being reported in which the persons, or any of them, named in Division B hereof had an interest, or if on February 3, 1917, the estate or trust being reported was in any way indebted to such persons, or to any of them, an additional report as of February 3, 1917, must be made, unless all such interests and indebtedness are included in this report.

(9) Make separate reports on separate blanks for each estate or trust fund in which an enemy or ally of enemy has an interest.

(10) Do not leave any question unanswered. If a negative answer is intended, write "None" or "No."

(11) If two or more persons have joint custody or control of an estate or trust fund, they must report jointly.

To Alien Property Custodian,
Washington, D. C.

The undersigned, in pursuance of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, hereby makes the following written statement containing the particulars required by the Alien Property Custodian of the property or interest in an estate or trust fund (including indebtedness owed by the estate to any of the persons named in Division B hereof) which the undersigned on October 6, 1917, held, had, or had custody or control of, or now holds, has, or has custody or control of, alone or jointly with others, in which an enemy or ally of enemy, or person whom the undersigned may have reasonable cause to believe to be an enemy or ally of enemy, has an interest, to wit:

Exhibit A—Annexed to Petition of Custodian.

A.

Person Reporting.

Name of individual, partnership, association, or corporation making report:

Commercial Trust Company of New Jersey, 15 Exchange Place, Jersey City, Hudson County, (Address) (No.) 15 (Street) Exchange Place, (City) Jersey City, (County) Hudson County, (State) New Jersey.

If jointly with others, names and addresses of associates:

B.

Names of Enemies and Allies of Enemy Interested in Estate or Trust Fund.

Name—Helene J. von Schierholz.

Last Known residence or address—Schloss Plaue Thuringen, #3 Plaue, Thuringen, Germany.

Nationality—Don't know.

Name and address of attorney or representative in United States (if any) or enemy or ally of enemy—(Name) E. T. Greiner, (Address) 25 Beaver Street, New York City.

C.

Capacity in Which the Person Reporting Holds the Estate, or Property, or Interest in Property.

State whether person reporting is executor, trustee, or in what fiduciary or representative capacity acting; state when and how appointed; attach copy of will, trust agreement, or other instrument (if any), with statement when and where recorded; in case of decedent's estate, give name of deceased; in case of court proceedings, probate or

otherwise, give the title and character of proceeding, date when commenced, name of court, and docket number of proceedings; name and address of attorney for estate or trust. Give general statement as to status of the administration of the estate, when last account was filed, and when next account and final account are likely to be filed, and when estate is likely to be finally settled.

Commercial Trust Company of New Jersey makes this report as trustee under the agreement, a copy of which is hereto annexed and marked "Schedule C". This agreement has not been recorded. The names and addresses of other persons interested with persons names at "B" in the property are as follows:

1. Fr. Wesche, whose last known address is 130 Fauborg Street St. Denis, Paris, France, whose interest is derived from the trust agreement, a copy of which is attached hereto and marked "Schedule C."

SCHEDULE C.

RECEIVED, Jersey City, January 30, 1913, for the account of Frederick Wesche, of Paris, France, and Helene J. v. Schierholz, of Plaue, Thuringen, Germany, the bonds particularly set out in the schedule or list hereto annexed, and having a par value of five hundred and twenty four thousand dollars ($524,000.) to be held for the joint account of the said Frederick Wesche and Helene J. v. Schierholz, and to collect the interest to become due and payable on said bonds for the joint account of the said Frederick Wesche and Helene J. v. Schierholz and to deliver over said bonds from time to time as requested, to the said Fred-

erick Wesche, or to the said Helene J. v. Schierholz, or to the survivor of them, it being understood that the said bonds and the said interest money to be collected thereon are to be held and collected and delivered or paid over to either the said Frederick Wesche or to the said Helene J. v. Schierholz, or to the survivor of them. Upon all all interest moneys collected on said bonds there is to be retained by the undersigned for its services in the premises 2% of the amount so collected; this receipt is executed in triplicate.

COMMERCIAL TRUST COMPANY OF NEW JERSEY,
By J. W. Hardenbergh, President.

Attest:
(Seal) WM. J. FIELD, Secretary.

The deposit of the bonds with the Commercial Trust Company of New Jersey and the terms upon which said Trust Company is to hold and deliver over the said bonds and to collect and pay over the interest thereon as set forth in the above receipt is hereby ratified and confirmed.

Dated February , 1913.

FR. WESCHE.
HELENE J. v. SCHIERHOLZ

(Annexed to the above agreement is a schedule of stocks and bonds which were delivered thereunder, which stocks and bonds are now represented by the schedule annexed to this report.)

Exhibit A—Annexed to Petition of Custodian.

D.

Nature of Interests of Persons Named at B Hereof in Said Estate or Property.

State whether such persons are sole beneficiaries; if not, give their respective interests and the names and addresses of other persons interested in the estate or trust fund. State how persons named under B hereof are interested, whether as legatees, devisees, creditors or otherwise. If will or other instrument is furnished, indicate part of same relating to the persons named under B hereof, explaining how their interests arise. Give duration of such interests, whether for life, for years, or otherwise. In case of guardianships or life estates or in other cases where relevant, give ages of persons named under B hereof.

So far as Commercial Trust Company of New Jersey knows Helene J. v. Schierholz and Frederick Wesche are sole beneficiaries under said agreement. The property held in trust for Helene J. v. Schierholz and Frederick Wesch is set out in Schedule E hereto annexed.

SCHEDULE E.

	Par	*Rate*	*Interest Payable*
30,000 Vancouver Lumber Co. Ltd. 1st Mortgage, 6% Bonds, Nos. M-229-237, M239-253, M255-260,	30,000	6	Jany. & July 1
9,000 Tacoma Eastern R.R. Co. 1st Mtge. 5% Gold Bonds, Nos. 462-470	9,000	5	"

Exhibit A—Annexed to Petition of Custodian.

28,000 City of Chicago, City Hall, 4% Bonds, Nos. 1611-9, 1676-82, 2297-8, 2489-95, 2528-30	28,000	4	"
5,000 Montreal Tramways Co. 1st Refdg. 5% Gold Bonds, Series A, Nos. 4116-20	5,000	5	"
10,000 Golf & Ship Island R.R. Co. 1st Mtge. Refdg. & Terminal 5% Gold Bonds, Nos. 311-3, 320, 456-8, 780-1, 1817	10,000	5	"
10,000 Kings County Lighting Co. 5% Refdg. 1st Mtge. Gold Bonds, Nos. 2131-4, 2137-41, 2354	10,000	5	"
5,000 Board of Education of the Memphis City Schools 4¼% Bonds Nos. 134-6, 267-8	5,000	4¼	"
11,000 Board of Education of the Memphis City Schools 4½% Bonds, Nos. 232-42	11,000	4½	"
10,000 Adirondack Electric Power Corpn., 1st Mtge. 5% Gold Bonds, Nos. 3949-52, 4156-9, 4216-7	10,000	5	"
5,000 Norfolk Southern R.R. Co. 1st & Refdg. Mtge. 5% Bonds Series A, Nos. M1386-90	5,000	5	Feby. & August 1
10,000 Hudson Navigation Co. 6% Gold Mtge. Bonds Nos. 116-8, 605-6, 1143-7	10,000	6	"

Exhibit A—Annexed to Petition of Custodian.

40,000 Champion Lumber Co. 1st Mtge. 6% Gold Bonds, Nos. M1012-6, M1218-22, M1427-31, M1632-6, M1837-41, M2044-8, M2250-4, M2457-61	40,000	6	Apr. & Oct. 1
20,000 City of Jersey City Water 4½% Gold Bonds Nos. 2165-74, 2176-85	20,000	4½	"
5,000 Clearview Coal Co., Scranton, Pa., 1st Mtge. 6% Gold Bonds, Nos. 93-7	5,000	6	Apr. & Oct. 15
10,000 New Netherlands Theatre Co. 6% Gen. Mtge. Gold Bonds Nos. 226-235	10,000	6	May & Nov. 1
16,000 The Duluth St. Ry. Co. 5% 1st Mtge. Gold Bonds, Nos. 1-5, 1082-1091, 2069	16,000	5	"
40,000 Central Georgia Power Co. 1st Mtge. S.F. 5% Gold Bonds, Nos. $500 Bond D2912-31, $1,000 Bond M1927-56	40,000	5	May & Nov. 1
6,000 Fonda, Johnstown & Gloversville R.R. Co. 1st Con. Genl. Refdg. Mtge. 4½% Gold Bonds, Nos. 2360-5	6,000	4½	"
10,000 City of Los Angeles Water Works, 4½% Bonds Class F, Nos. 9522-6, 11349-53	10,000	4½	June & Dec. 1

Exhibit A—Annexed to Petition of Custodian.

10,000 Westchester Lighting Co. 1st Mtge. 5% Gold Bonds, Nos. 3411-3, 3769-71, 5811-4	10,000	5	"
5,000 Corporate Stock of the City of New York for the Extension of Riverside Drive, Nos. 25520-4	5,000	3½	May & Nov. 1
5,000 Corporate Stock of the City of New York for the payment of Assessments, Nos. 30008-12	5,000	3½	"
41,000 Corporate Stock of the City of New York, Nos. 2270-2273, 2365-2368, 2375, v2 v2 v2 v2 v2 2398, 2716, 2722, 2724-2726, v2 v2 v2 v2 v2 7700-7714, . 7742, 10521- v2 v2 v2 v2 10525 v2	41,000	3½	"
44,000 Corporate Stock of the City of New York to Provide for the Supply of Water, Nos. 655-698	44,000	3½	"
30,000 Corporate Stock of the City of New York, Nos. 80-2, 151-3, 156-7, 10143-52, 10415-18, 10420-7, v3 under all Nos.	30,000	3½	"
10,000 Omaha Water Works of the City of Omaha Nos. 7058, 7025-33	10,000	4½	Jany. & July

Exhibit A—Annexed to Petition of Custodian.

53,000 U. S. of America 4% Second Liberty Loan Bonds		53,000	4 May & Nov. 15

Cash in check account of Helen J. v. Schierholz and Frederick Wesche on deposit with Commercial Trust Company of New Jersey, at its above address, $4,700.08.

E.

NATURE OF PROPERTY COMPRISING ESTATE OR TRUST FUND.

Give a complete list in detail, as of present date, of all property, real, personal, and mixed, including cash on hand, annexing separate sheets if necessary; where reporter is an executor, administrator, or other personal representatiev of a decedent, include all real estate of which the deceased died seized or possessed, or in which he was in any way interested describe all real estate listed including character and extent of estate or title to or in same, and whether the property is improved or unimproved, and if improved, character of improvements, estimated market value of the property and encumbrances upon same; if complete list of property belonging to estate or trust fund cannot be given state reason therefor and complete by supplemental report as soon as possible; if inventory or account is a matter of record, state when and where recorded and attach copy thereof, and if not a matter of record, state reason therefor; state actual or estimated annual income from estate or trust, and estimated values of distributable shares of principal and of annual distribut-

able income therefrom of persons named under B; if estate or trust is audited by public accountant, state name and address.

F.

INTERESTS OF UNKNOWN ENEMIES OR ALLIES OF ENEMY.

If the person reporting has reasonable cause to believe that any interest in the estate is vested in an enemy or ally of enemy, and is not advised of the name of such enemy or ally of enemy, a statement should be made of that fact, together with a statement of the interest of such unknown enemy or ally of enemy in the estate.

Nature and extent of the interest of the unknown enemy or ally of enemy:

.....

Of what country is he (believed to be) a subject or citizen?

.....

Last known residence or address of above enemy or ally of enemy:

.....

Give any further information indicating subsequent change of residence or address

.....

G.

GENERAL REMARKS.

(Here include any relevant information not set forth above.)

The following question must also be answered by the person making this report:

Exhibit A—Annexed to Petition of Custodian.

Did you on February 3, 1917, or on or after October 6, 1917, other than as stated in this report, either individually or in a representative capacity, hold, or have the custody or control of any property, beneficial or otherwise, alone or jointly with others, of, for, or on behalf of any enemy or ally of enemy or person whom you may have reasonable cause to believe to be an enemy or ally of enemy, and of which you have not yet made report to the Alien Property Custodian, or were you on February 3, 1917, or on or after October 6, 1917, either individually or in a representative capacity, indebted to such other person, and have not yet made report of such debt to the Alien Property Custodian?

Answer: No.

(If this question is answered in the affirmative, additional forms will be furnished upon request.)

COMMERCIAL TRUST CO. OF N. J.
(Signature of party making report.)
by J. S. PERKINS,
Secretary and Treasurer.

(SEAL.)

(Partnership should sign by member or duly authorized representative. Corporations or associations should sign by officer or duly authorized representative, and should affix corporate or official seal.)

Exhibit A—Annexed to Petition of Custodian.

AFFIDAVIT OF INDIVIDUAL MAKING REPORT.

State of .....
County of ..... } ss.:

I swear (or affirm) that the foregoing report and answers therein made are true and correct.

.....

Subscribed and sworn to before me this.....
day of....., 191

.....
.....

AFFIDAVIT OF MEMBER OR REPRESENTATIVE OF PARTNERSHIP MAKING REPORT.

State of .....
County of ..... } ss.:

I swear (or affirm) that I am.....
of the partnership making the foregoing report and that the foregoing report and answers therein made are true and correct.

.....

Subscribed and sworn to before me this.....
day of....., 191

.....
.....

Exhibit A—Annexed to Petition of Custodian.

AFFIDAVIT OF OFFICER OR REPRESENTATIVE OF CORPORATION OR ASSOCIATION MAKING REPORT.

State of New Jersey }
County of Hudson } ss.:

I swear (or affirm) that I am the Secretary and Treasurer of the corporation making the foregoing report, and that the foregoing report and answer therein made are true and correct.

(Signed) JAY S. PERKINS.

Subscribed and sworn to before me this 19 day of December, 1917.

(Signed) ? ? ANDERSON,
Master in Chancery
of New Jersey.

Exhibit A—Annexed to Petition of Custodian.

Report No. ..... Trust No. .....
Do not write on this back, which is to be filled out only in the office of Alien Property Custodian.)

ALIEN PROPERTY CUSTODIAN

Report of Property and Indebtedness Held by Executors, Trustees, or Other Persons Acting in a Like Fiduciary or Representative Capacity, under Section 7 (a), "Trading with the enemy Act."

.....
Reporting Fiduciary.

....., 191

Received and entered in Register of Reports and referred to Director, Bureau of Investigation for report to Bureau of Trusts.

.....
Report Register Clerk, Accounting Section, Division of Accounts.

....., 191

Referred to Director of Bureau of Trusts with action of this Bureau attached.

.....
Director, Bureau of Investigation.

....., 191

Received and credited to Bureau of Investigation in Register of Reports and referred to Division of Court and Private Trusts.

.....
Director, Bureau of Trusts.

Exhibit B—Annexed to Petition of Custodian.

....., 191

Referred to Chief of Division of Accounts to open on trust books.

.....

Chief, Division of Court and Private Trusts.

....., 191

Returned to Chief of Division of Court and Private Trusts.

.....

Chief, Division of Accounts.

....., 191

Referred to ..... Section.

.....

Chief, Division of Court and Private Trusts.

Filed by .....

Date filed .....

Exhibit B.

A.P.C. Form No. 106 Original Report No. 8393
Trust No. C-3239

ALIEN PROPERTY CUSTODIAN

DEMAND BY ALIEN PROPERTY CUSTODIAN FOR PROPERTY

Extracts from "Trading with the Enemy Act":

Sec. 7 (c) "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of,

or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e) "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act."

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor or obligee."

Exhibit B—Annexed to Petition of Custodian.

To Commercial Trust Company of New Jersey, as Trustee under a certain Trust Agreement between Frederick Wesche, Helene J. von Schierholz and Commercial Trust Company of New Jersey,

Address 15 Exchange Place, Jersey City, N. J.

I, A. MITCHELL PALMER, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and said executive orders, after investigation do determine that the following property, to wit:

$38,000.00—Thirty Eight Thousand and no/100 Dollars, Cash together with any interest accrued thereon to date of payment to the Alien Property Custodian.

$30,000.00—Vancouver Lumber Co. Ltd. 1st Mtge. 6% Bonds, Nos. M229, 237, M239-253, M255-260.

$9,000.00—Tacoma Eastern R. R. Co. 1st Mtge. 5% Gold Bonds, Nos. 462-470.

$28,000.00—City of Chicago, City Hall, 4% Bonds, Nos. 1611-9, 1676-82, 2297-8, 2489-95, 2528-30.

$5,000.00—Montreal Tramways Co. 1st & Refdg. 5% Gold Bonds, Series A, Nos. 4116-20.

$10,000.00—Gulf & Ship Island R. R. Co. 1st Mtge. Refdg. & Terminal 5% Gold Bonds, Nos. 311-3, 320, 456-8, 780-1, 1817.

$10,000.00—Kings County Lighting Co. 5% 1st Refdg. Mtge. Gold Bonds, Nos. 2431-4, 2137-41, 2354.

Exhibit B—Annexed to Petition of Custodian.

$5,000.00—Board of Education of the Memphis City Schools 4½% Bonds, Nos. 134-6, 267-8.

$11,000.00—Board of Education of the Memphis City Schools 4½% Bonds, Nos. 232-42.

$10,000.00—Adirondack Electric Power Corpn., 1st Mtge. 5% Gold Bonds, Nos. 3949-52, 4156-9, 4216-7.

$5,000.00—Norfolk Southern R. R. Co., 1st & Refdg. Mtge. 5% Bonds Series A, Nos. M1386-90.

$10,000.00—Hudson Navigation Co., 6% Gold Mtge. Bonds Nos. 116-8, 605-6, 1143-7.

$40,000.00—Champion Lumber Co. 1st Mtge. 6% Gold Bonds, Nos. M1012-6, M1218-22, M1427-31, M1632-6, M1837-41, M2044-8, M2250-4, M2457-61.

$20,000.00—City of Jersey City Water 4½% Gold Bonds Nos. 2165-74, 2176-85.

$5,000.00—Clearview Coal Co., Scranton, Pa. 1st Mtge. 6% Gold Bonds, Nos. 93-7.

$10,000.00—New Netherlands Theatre Co. 6% Gen. Mtge. Gold Bonds Nos. 226-235.

$16,000.00—The Duluth St. Ry. Co. 5% 1st Mtge. Gold Bonds, Nos. 1-5, 1082-1091, 2069.

$40,000.00—Central Georgia Power Co., 1st Mtge. S. F. 5% Gold Bonds, Nos. $500. Bond D2912-31, $1,000 Bond M1927-56.

$6,000.00—Fonda, Johnstown & Gloversville R. R. Co. 1st Con. Genl. Refdg. Mtge. 4½% Gold Bonds, Nos. 2360-5.

$10,000.00—Westchester Lighting Co., 1st Mtge. 5% Gold Bonds, Nos. 3411-3, 3769-71, 5811-4,

$5,000.00—Corporate Stock of the City of New York for the Extension of Riverside Drive, Nos. 25520-4,

Exhibit B—Annexed to Petition of Custodian.

$5,000.00—Corporate Stock of the City of New York for the payment of Assessments, Nos. 30008-12,

$41,000.00—Corporate Stock of the City of New York, Nos. 2270-2273, 2365-2368, 2375, 2398, 2716, 2722, 2724-2726, 7700-7714, 7742, 10521-10525, v2 v2 v2 v2 v2 v2 v2 v2 v2 v2 v2 v2 v2 v2 v2 v2 v2

$44,000.00—Corporate Stock of the City of New York to Provide for the Supply of Water, Nos. 655, 698,

$30,000.00—Corporate Stock of the City of New York, Nos. 80-2, 151-3, 156-7, 10143-52, 10415-18, 10420-7, v3 under all Nos.

$10,000.00—Omaha Water Works of the City of Omaha, Nos. 7058, 7025-33,

$10,000.00—City of Los Angeles Water Works, 4½% Bonds Class F, Nos. 9522-6, 11349-53,

$53,000.00—U. S. of America 4% Liberty Loan Bonds,

together with all interest accrued and collected on any and all of the foregoing to date of payment to the Alien Property Custodian.

The Bankers Trust Co. is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian, the property herein mentioned, and upon the service of this demand on you by said depositary, you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to depositary, which in all cases should be made payable to the Alien Property Custodian. is by you owing and belonging to and held for, by,

on account of, and on behalf of, and for the benefit of Helene J. von Schierholz, Address: Schloss Plaus Thuringen #3 Plaue, Thuringen, Germany, whom after investigation I do determine to be an enemy not holding a license granted by the President, and I hereby require that the said money and property shall be by you conveyed, transferred, assigned, delivered, and paid over to me as Alien Property Custodian to be by me held, administered, and accounted for as provided by law.

Witness my hand and seal of office, this 19th day of June, 1918.

(Signed) A. MITCHELL PALMER,
WUV:AAF Alien Property Custodian.

Service of the within demand accepted this 8th day of July, 1918.

Served the within notice and demand on the within-named Commercial Tr. Co. of N. J. as trustee under a certain Trust Agreement between Frederick Wesche, Helene J. von Schierholz, & Commercial Tr. Co. of New Jersey, at 15 Exchange Place, in the City of Jersey City, State of New Jersey, this 8th day of July, 1918, by giving a true and correct copy thereof,

(in the case of a corporation.)

to Mr. J. S. Perkins, as Asst. Secy. & Treasurer of the corporation of whom said demand is made, at the office of said corporation. Acceptance of service being refused.

BANKERS TRUST COMPANY,
(Signed) C. D. Anderson.

(Strike out the inapplicable clauses.)

Exhibit C.

Report No. 8393
Trust No. C3239

Demand by Alien Property Custodian for Property.

To Commercial Trust Company of New Jersey, as Trustee under a certain Trust Agreement between Frederick Wesche, Helene J. von Schierholz and Commercial Trust Company of New Jersey.

Address: 15 Exchange Place, Jersey City, N. J.

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, the amendments thereto, the proclamation of the President, and the Executive Orders issued in pursuance thereof, by virtue of the authority vested in me by said Act as amended, and by said Executive Orders, after investigation do determine that:

Helene J. von Schierholz,

whose address is Schloss Plaus Thurigen #3 Plaue, Thurigen, Germany, is an enemy (not holding a license granted by the President) and that the following property, right, claim, or chose in action to wit:

That certain obligation, debt or chose in action arising out of, or existing on account of that certain trust agreement made by and between Frederick Wesche and Helene J. von Schierholz with Commercial Trust Company of New Jersey

on or about the 30th day of January 1913 and standing on the books of the Commercial Trust Company of New Jersey in the name of and to the credit of Frederick Wesche and Helene J. von Schierholz, said obligation, debt or chose in action being designated as a "Checking Account," now amounting to Thirty Nine Thousand One Hundred Ninety Dollars and Seventy-Six Cents ($39,190.76) together with any accretions thereto and any interest accrued on the said obligation, debt or chose in action:

and that certain obligation, debt or chose in action arising out of, or existing on account of that certain trust agreement made by and between Frederick Wesche and Helene J. von Schierholz with Commercial Trust Company of New Jersey on or about the 30th day of January 1913 and standing on the books of the Commercial Trust Company of New Jersey in the name of and to the credit of Frederick Wesche and Helene J. von Schierholz, said obligation, debt or chose in action being designated as a "Trust Account," now amounting to Eighteen Thousand One Hundred Fifty Nine Dollars and Sixty-Nine cents ($18,159.69) together with any accretions thereto and any interest accrued on the said obligation, debt or chose in action.

and that the following bonds and corporate stocks, to wit:

$30,000.00—Vancouver Lumber Co. Ltd. 1st Mtge. 6% Bonds, Nos. M229, 237, M239-253, M255-260,

$9,000.00—Tacoma Eastern R. R. Co. 1st Mtge. 5% Gold Bonds, Nos. 462-470,

Exhibit C—Annexed to Petition of Custodian.

$28,000.—City of Chicago, City Hall, 4% Bonds, Nos. 1611-9, 1676-82, 2297-8, 2489-95, 2528-30,

$5,000.—Montreal Tramways Co. 1st & Refdg. 5% Gold Bonds, Series A. Nos. 4116-20,

$10,000.—Gulf & Ship Island R. R. Co. 1st Mtge. Refdg. & Terminal 5% Gold Bonds, Nos. 311-3, 320, 456-8, 780-1, 1817,

$10,000.—Kings County Lighting Co. 5% 1st Refdg. Mtge. Gold Bonds, Nos. 2131-4, 2137-41, 2354,

$5,000.—Board of Education of the Memphis City Schools 4¼% Bonds, Nos. 134-6, 367-8,

$11,000.—Board of Education of the Memphis City Schools 4½% Bonds, Nos. 232-42,

$10,000.—Adirondack Electric Power Corpn. 1st Mtge. 5% Gold Bonds, Nos. 3549-52, 4156-9, 4216-7,

$5,000.—Norfolk Southern R. R. Co. 1st & Refdg. Mtge. 5% Bond Series A. Nos. M1386-90,

$10,000.—Hudson Navigation Co. 6% Gold Mtge. Bonds, Nos. 116-8, 605-6, 1143-7,

$40,000.—Champion Lumber Co. 1st Mtge. 6% Gold Bonds, Nos. M1012-6, M1218-22, M1427-31, M1632-6, M1837-41, M2044-8, M2250-4, M2457-61,

$20,000.—City of Jersey City Water 4½% Gold Bonds Nos. 2165-74, 2176-85,

$5,000.—Clearview Coal Co., Scranton, Pa. 1st Mtge. 6% Gold Bonds, Nos. 93-7,

$10,000.—New Netherlands Theatre Co., 6% Gen. Mtge. Gold Bonds Nos. 226-235,

$16,000.—The Duluth St. Ry. Co. 5% 1st Mtge. Gold Bonds, Nos. 1-5, 1082-1091, 2069,

$40,000.—Central Georgia Power Co. 1st Mtge. S. F. 5% Gold Bonds, Nos. $500. Bond D2912-31, $1000. Bond M1927-56,

Exhibit C—Annexed to Petition of Custodian.

$6,000.—Fonda, Johnstown & Gloversville R. R. Co. 1st Con. Genl. Refdg. Mtge. 4½% Gold Bonds, Nos. 2360-5,

$10,000.—Westchester Lighting Co. 1st Mtge. 5% Gold Bonds, Nos. 3411-3, 3769-71, 5811-4,

$5,000.—Corporate Stock of the City of New York for the Extension of Riverside Drive, Nos. 25520-4,

$41,000.—Corporate Stock of the City of New York Nos. 2270, 2273, 2365-2368, 2375, 2398, v2 v2 v2 v2 v2 v2
2716, 2722, 2724-2726, 7700-7714, 7742, 10521-
v2 v2 v2 v2 v2 v2 v2 v2
10525,
v2

$44,000.—Corporate Stock of the City of New York to Provide for the supply of Water, Nos. 655-698,

$30,000.—Corporate Stock of the City of New York, Nos. 80-2, 151-3, 156-7, 10143-52, 10415-18, 10420-7, V3 under all Nos.,

$10,000.—Omaha Water Works of the City of Omaha Nos. 7058, 7025-33,

$10,000.—City of Los Angeles Water Works, 4½% Bonds Class F, Nos. 9522-6, 11349-53,

$53,000.—U. S. of America 4% Second Liberty Loan Bonds, together with all interest and income accrued and collected on any and all of the foregoing to date of payment to the Alien Property Custodian, is by you owing and held for, on account of, on behalf of, and for the benefit of the said enemy.

I, as Alien Property Custodian do hereby seize the above described obligations, debts or choses in action, and I do hereby seize the above described

bonds and corporate stocks, and do hereby require that the same shall be by you conveyed, transferred and assigned to me as Alien Property Custodian to be by me held, administered and accounted for as provided by law.

I, as Alien Property Custodian do further require that you note the substance of this seizure and demand upon your books and records with respect to the said obligations, debts or choses in action, and with respect to the above described bonds and corporate stocks.

I, as Alien Property Custodian do further require that you shall forthwith deliver and pay over to me the sum of Thirty Nine Thousand One hundred Ninety Dollars and Seventy Six Cents, ($39,190.76) designated as aforesaid as a "Checking Account", and the further sum of Eighteen Thousand One Hundred Fifty Nine Dollars and Sixty-nine Cents ($18,159.69) designated as aforesaid as a "Trust Account", together with any accretions thereto and any interest accrued on the said sums and the accretions thereto on account of the said obligations, debts or choses in action, to be by me held, administered and accounted for as provided by law.

I, as Alien Property Custodian do further require that you shall forthwith convey, assign, deliver and pay over to me the above described bonds and corporate stocks, together with any interest thereon which has been or may hereafter be received by you, to be by me held, administered, and accounted for as provided by law.

I, as Alien Property Custodian, do hereby further require that within five (5) days from the service of this demand upon you, you shall report to me any and all acts which you have done

or omitted to do pursuant to the requirements of this demand.

Witness my hand and seal of office this 28th day of March 1919.

(Signed) FRANCIS P. GARVAN,
Alien Property Custodian.

Approved:
(Signed) C. E. Dunbar,
Asst. Genl. Couns.

Witness: (Signed) J. A. Loder.

(refused acceptance)

Service of the within demand accepted this .... day of ....., 19....,

.....

Served the within notice and demand on the within-named Commercial Trust Co. at 15 Exchange Place, in the City of Jersey, State of New Jersey, this 17 day of April, 1919.

(In the case of an individual).

to the person of whom the said demand is made

(In the case of a partnership.)

to....., a member of the partnership of whom said demand is made.

(In the case of a corporation)

to Jay S. Perkins, Secretary and Treasurer of the Corporation of whom said demand is made, at the office of said corporation.

BANKERS TRUST CO.
(Signed) Chas. E. Flynn.

(Strike out the inapplicable clauses.)

(Endorsed) Filed Sept. 11, 1920 at 11:00 o'clock A. M. George T. Cranmer, Clerk.

Amended Answer of Commercial Trust Company of New Jersey.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

FRANCIS P. GARVAN, as Alien Property Custodian,
Petitioner,

v.

COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation,
Respondent.

In Equity.

In the Matter of the Application of Francis P. Garvan, as Alien Property Custodian, in re: certain stocks, bonds, securities and money alleged to be held by this respondent as the money and property of Helene J. von Schierholz, of Thurigen, Germany, an enemy.

The amended answer of Commercial Trust Company of New Jersey, above named respondent to the petition of the above named petitioner.

I.

This respondent admits the allegations of paragraph 1 of the petition.

II.

This respondent admits the allegations of paragraph 2 of the petition.

III.

This respondent admits that on or about December 19, 1917, this respondent executed a report under oath to the Alien Property Custodian, signed and sworn to as alleged in the petition, to the effect that this respondent held certain stocks, bonds, securities and money in trust for the joint account of Frederick Wesche of Paris, France, and Helene J. von Schierholz of Plaue, Thuringen, Germany, the terms of the said holding being as specified in the agreement depositing the same with this respondent dated January 30, 1913, of which a copy is annexed hereto, and made a part hereof and marked Exhibit (1), except only that said agreement was subsequently modified in April, 1913, by written agreement so as to provide that the compensation of this respondent should be one per cent. on income alone instead of two per cent.

This respondent is without knowledge that said report is on file in the office of the Alien Property Custodian as report #8393 or that the alleged copy of the same alleged to contain a complete list of the money and other property in this proceeding referred to and annexed to the petition and marked "Exhibit A", is or is not a true copy of said report; and this respondent refers to the original report when produced for the contents of the same.

This respondent made the said report for the reasons and upon the information it then had, as hereinafter set out, and for the purpose of protecting itself against liability to the United States of America in the event it should be determined by competent authority upon competent proof that the said Helene J. von Schierholz was in fact an enemy or ally of enemy within the meaning of the "Trading with the Enemy Act".

IV.

This respondent admits that on or about March 28, 1919, this respondent informed the Alien Property Custodian by telegraph that it held for said accounts with Frederick Wesche and Helene J. von Schierholz the amounts of money specified in paragraph 4 of the petition.

Said information was given by this respondent to save itself from liability to the United States of America in the event that it should be thereafter determined by competent authority upon due investigation or hearing, that the said von Schierholz was in fact an alien enemy, or ally of enemy within the meaning of said act, and that such property or any of it was hers or held by, or for her, or on her behalf or account, or for her benefit.

V.

This respondent is without knowledge as to the determination of the status of said Helene J. von Schierholz as an enemy alleged to have been made on or about June 19, 1918, by the Alien Property Custodian.

This respondent admits that a demand by the Alien Property Custodian was made upon respondent on or about July 8, 1918, requiring respondent to convey, transfer, assign and deliver to the Alien Property Custodian all money and other property held by this respondent under said deposit agreement of January 30, 1918, together with all interest, accrued and collected thereon.

This respondent is without knowledge as to by whom the said demand was served.

This respondent is without knowledge that the copy of said demand or that the return of service alleged to be endorsed thereon and marked "Exhibit B" are true copies.

This respondent, on information and belief, alleges that A. Mitchell Palmer did not, as Alien Property Custodian, either personally or otherwise, prior to the alleged delivery of the paper "Exhibit B" of the petition herein, or of whatever paper was so delivered, or at any time, investigate or determine after investigation that the securities and moneys mentioned in said "Exhibit B" of the petition, or any of them, were either owing to or belonging to or held for, by, on account of, or on behalf of or for the benefit of Helene J. von Schierholz in the petition named, and alleges on information and belief that no investigation of the ownership or conditions of tenure thereof, or any of them, aside from receiving such report of this respondent, was made or attempted by said Palmer as such Custodian, or on his behalf; and further alleges on information and belief that the information of the possession by this respondent of such funds and securities speci-

fied in said report made by it to the Alien Property Custodian in December, 1917, as to which said "Exhibit B" of the petition recites that such decision was made by said Palmer, as such Alien Property Custodian after investigation, was derived by said Palmer solely from the said reports so made to him by this respondent, and such report itself contained and conveyed to said Palmer as such Alien Property Custodian information and notice that Frederick Wesche was both an owner and a holder at law and interested as a beneficial owner in the securities held and money owed by this respondent described and mentioned in said report, and such report put said Palmer as such Custodian on inquiry as to the ownership of said securities and accounts, and the persons by and for whom and for whose account and benefit the same were held, and required of him investigation of the facts, especially through the sources of which this respondent thereby advised him, and particularly through the said Wesche.

This respondent further alleges on information and belief that neither said Palmer, as such Alien Property Custodian, nor the petitioner herein, his successor, nor any of the respective subordinates, ever made any inquiry of the said Wesche, or of any one representing him, or attempted to make any inquiry of him or of any one representing him, as to the rights of said Wesche or of other persons in such securities or funds or moneys owed, or ever investigated or attempted to investigate the rights of said Wesche, or of others, in such securities or funds or moneys due, or to ascertain any of the facts concerning the beneficial

ownership of such securities, funds, and indebtedness, all of which could have been readily ascertained by said Palmer, or by the petitioner, or by their representatives, had they or any of them inquired as to the facts as to ownership and tenure of such property and indebtedness of the said Wesche, whose Paris address had been furnished to said Palmer as such Custodian by this respondent in its said report.

This respondent further alleges on information that any inquiries addressed to said Wesche at his Paris address given in the said report to the Custodian made by this respondent, have at all times been regularly forwarded to said Wesche who removed to Switzerland in August, 1914, and said Wesche's Swiss address was at all times after his removal to Switzerland in August, 1914, promptly furnished to any and all inquirers for him at his former Paris address, and all mail addressed to him at that address was forwarded to him in Switzerland; and that so far as any pretended investigation was made, or any information was secured by said Palmer as such Alien Property Custodian, either personally or officially, prior to the service of the paper of which "Exhibit B" of the petition is alleged to be a copy, such information had disclosed to him, prior to that time, not only that said Wesche was a person to whom said securities legally belonged at least in part, and to whom said sums of money were legally owing and payable by this respondent, and for whose benefit and account and in whose behalf such securities were held; but had also disclosed to such Custodian that said

Wesche was at least in part the beneficial owner of said funds and securities and that said Helene J. von Schierholz was at most a beneficial owner of only a part thereof; that disregarding such information and without communication with said Wesche or affording him any opportunity to be heard or to show his rights, and without inquiry or investigation, the said Alien Property Custodian secretly and without evidence to support his pretended conclusion and without making the investigation required by law; and contrary to the information he has in his possession and to the proofs and notice that were before him of the rights of said Wesche, including the report made him by this respondent, and in fraud of the rights of said Wesche (to whom no recourse to any court was then afforded by the terms of the statute, against such Custodian, which then afforded such recourse only to persons resident in the various judicial districts in the United States), and in fraud of the rights of Charles J. Ahrenfeldt, an American citizen then and now resident abroad, either in England, France or Switzerland (to whom no recourse to any court was then afforded by the terms of the statute, because he was not resident in any judicial district of the United States fraudulently pretended that he said Palmer, had duly investigated, and that he had personally examined and passed on the evidence obtained by the investigation of the rights and interests in such securities and moneys owed, when he had not so investigated or examined or passed on the evidence, and that said Palmer fraudulently pretended by his said letter, of which

"Exhibit B" of the petition purports to be a copy, to have determined after examination and investigation (contrary to the evidence and information in his possession, and the evidence immediately obtainable had he made investigation, and contrary to the facts as they existed), that said Wesche had no rights in such securities and moneys, and that the same belonged exclusively to said Helene J. von Schierholz.

This respondent further alleges on information and belief that any such pretended determination by the said A. Mitchell Palmer, as Alien Property Custodian, as recited in said "Exhibit B" of the petition herein, that said securities belonged to said Helene J. von Schierholz and that said sums of money were owing to her, was unlawful, fraudulent, null and void and did not constitute due process of law, and was an attempt to deprive the said Wesche and the other owners of said property, of their property without due process of law, and to take their respective private property for public use without compensation or opportunity to be heard, contrary to the provisions of the Fourth and Fifth amendments to the Constitution of the United States; and that such action was in excess of any powers that the Congress of the United States and the President of the United States could confer on such Custodian, or on any other administrative officer, even when legislating under the war powers of Congress, and also contrary to the provisions of the Act of Congress, approved October 6, 1917, commonly known as the Trading with the Enemy Act, and the amendments thereto theretofore

adopted, and contrary to any authority conferred by the President of the United States on said Palmer as such Alien Property Custodian under said Act of October 6, 1917, and the amendments made thereto prior to the making of such pretended determination.

VI.

This respondent admits that on or about March 28, 1919, petitioner made demand upon this respondent requiring respondent to deliver and pay over to petitioner the sums of money in paragraph 6 of the petition.

This respondent denies that said sums were held subject to the demand of said von Schierholz.

This respondent further admits that at the same time petitioner made a demand requiring respondent to convey, assign, deliver and pay over to petitioner certain stocks, bonds and securities, held by respondent under said deposit agreement of January 30, 1913, together with all interest and income, accrued and collected thereon.

This respondent is without knowledge as to by whom the said demand was served or that the alleged copy of the demand annexed to the petition and marked "Exhibit C" or the return of service thereon is a true copy thereof.

Further answering the allegations of paragraph 6 of the said petition herein this respondent, on information and belief, denies that either the sum of $39,190.76 designated as "Checking

Account," or the sum of $18,159.69 designated as a "Trust Account," or any part of either thereof was held by this respondent subject to the demand of said Helene J. von Schierholz, at any time or times after April 6, 1917, or under any other conditions or in any other way, at any time, than as herein alleged. This respondent, on information and belief, alleges that the right and power of said Helene J. von Schierholz at any time to demand delivery to her of any of said securities or moneys was, from the making of such deposit, only a power in trust, as is more particularly hereinafter set forth, which power ceased and determined on the declaration of war by the United States against Germany on April 6, 1917, and that such power (save for the cash and securities individually belonging to her as hereinafter set forth) involved elements of personal trust and confidence and was not transferable.

This respondent since November 1, 1920, has been informed and on its personal information and belief alleges that Helene J. von Schierholz in the said petition named was, from and after the declaration of war by the United States on Germany on April 6, 1917, technically an enemy of the United States, and until the enactment of the Act of Congress of June 5, 1920, without a license to deal with said properties, or any thereof, save only such license as was given by general proclamation in 1919. But this respondent alleges, on information and belief, that said Helene J. von Schierholz was born an American citizen on April 14, 1856, in Paris, France, while

her parents, who were then and there citizens of the United States, domiciled in Brooklyn, in the State of New York, were temporarily residing in Paris, France; that she is the daughter of the late Charles Ahrenfeldt of Kings County, New York (who was by birth a subject of the King of Denmark, but was duly naturalized as an American citizen on October 3, 1848, and who was domiciled and long resided in the City, as it then was, of Brooklyn, New York, and who retained his domicile in said Brooklyn until his death on January 21, 1893) and of Helene Ahrenfeldt, his wife, who was also an American citizen; that said Helene J. von Schierholz lost her American citizenship and became a German subject by her marriage on or about July 24, 1879 (and long prior to August 1, 1914) to her husband Arthur von Schierholz, who was a German subject, but who died in January, 1899; that at the time of her said marriage said Helene J. von Schierholz was an American citizen; that such marriage occurred long prior to August 1, 1914, and that said Helene J. von Schierholz has been since April 6, 1917, and is still domiciled in Germany and there a resident.

Save and except as hereinafter expressly admitted this respondent has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph numbered "VI" of the petitioner herein, and therefore denies the same, and each and every thereof.

VII.

This respondent is without knowledge that by virtue of said alleged determinations, requirements and demands petitioner became or is now vested with any or all the beneficial interests in said money or other property by virtue of Trading with the Enemy Act, the amendments thereto and the proclamations and executive orders issued thereunder and the facts in the petition set forth or otherwise.

This respondent is without knowledge that petitioner is the only person entitled to the said moneys and other property.

This respondent admits that it has failed and refused to recognize the alleged rights, power and authority of petitioner with respect to said moneys and other property and admits that this respondent has failed and refused and continues to refuse to convey, transfer, assign, deliver and pay to the said petitioner said moneys and other property with interest thereon all for the reasons herein set out.

Save and except as in this paragraph specifically admitted this respondent on information and belief denies each and every allegation contained in paragraph numbered "VII" of the petition herein.

VIII.

This respondent admits the allegations of paragraph VIII.

Amended Answer of Commercial Trust Company.

IX.

This respondent alleges on information and belief that the report of December 19, 1917, although made by respondent acting under and pursuant to and in compliance with the terms and provisions of the Trading with the Enemy Act and the amendments thereto, was made among other reasons to save respondent from liability in the event it should be determined by competent authority and upon competent investigation that the said Helene J. von Schierholz was an enemy within the meaning of said act and that the said securities and money were her property or that she was beneficially interested therein, and if so the extent of such interest, and in all respects in conformity with such knowledge and information as this respondent then had. That respondent had no actual knowledge or proof that the said Helene J. von Schierholz was an enemy and respondent's last knowledge at that time as to her residence had been acquired from a letter received from the said Helene J. von Schierholz dated February 15, 1913, and addressed from Schloss Plaue, No. 3, Thuringen, Germany. That respondent, from the receipt of said letter in the month of February, 1913, until November, 1920, had no additional knowledge or proof as to the residence or whereabouts of the said von Schierholz, and such was this respondent's knowledge as to her status on October 6, 1917, the date of the approval of the Trading with the Enemy Act, and on December 19, 1917, the date of said report. That prior to making the

said report, this respondent inquired of one Ernest T. Greiner of the City of New York, who was an agent of Frederick Wesche herein mentioned and held a limited power of attorney from him, as to the residence and whereabouts of the said von Schierholz and was informed by said Greiner that he could not tell this respondent what her actual residence was, whether in or out of territory prohibited by said Act. That this respondent being in doubt as aforesaid as to its duty to file the said report of December 19, 1917, by letter of October 27, 1917, inquired of the Alien Property Custodian whether or not its custody and control of the property and money in question was such as to require this respondent to report the same, and this respondent was advised by the Alien Property Custodian by letter dated October 29, 1917, that in his opinion a report should be filed under Section 7A of the Trading with the Enemy Act, and this respondent filed with said Custodian in December, 1917, its said report in response to such letter from the Custodian.

This respondent further alleges, on information and belief, that Frederick Wesche, above named, was for many years prior to the death of the late Charles Ahrenfeldt of Brooklyn, New York, a trusted business associate and friend of the said Charles Ahrenfeldt; that said Wesche is a man well over sixty years of age, and that upon the death of said Charles Ahrenfeldt above named in 1893, as above set forth, his three children by his said wife, Helene Ahrenfeldt, namely, Charles J. Ahrenfeldt, Helene J. von Schierholz, above named

(nee Ahrenfeldt) and Lucy von Uxküll-Gyllenband (nee Ahrenfeldt) derived and received from their said father's estate, assets and securities of large value;

That said Charles J. Ahrenfeldt is, and by and since his birth has at all times been an American citizen; and that said Charles J. Ahrenfeldt has at all times since August 1, 1914, resided and been in either England, or in France, or in Switzerland and has never been an enemy of the United States, nor since August 1, 1914, has he at any time resided within any judicial district of the United States.

This respondent further alleges on information and belief that said Lucy von Uxküll-Gyllenband was born a citizen of the United States on April 25, 1861, while her said parents, Charles Ahrenfeldt and Helene Ahrenfeldt, his wife, were domiciled in Brooklyn, but temporarily residing in Paris, France, as above stated; that said Lucy von Uxküll-Gyllenband lost her original American citizenship and became a German subject about 1885 by her marriage to a German subject, one Hans von Wangenheim, from whom she thereafter obtained a valid decree of divorce in the German courts prior to 1897. Thereafter and in 1897 she was again married to Count Woldemar von Uxküll-Gyllenband, also a German subject, and has ever since resided in Germany, and is now there a resident in the City of Berlin; and that, at the time of her said first marriage to said von Wangenheim, said Lucy von Uxküll-Gyllenband was an American citizen, and became a German subject by that marriage.

X.

This respondent further alleges, on information and belief, that prior to January 30, 1913, said Charles J. Ahrenfeldt, said Helene J. von Schierholz and said Lucy von Uxkull-Gyllenband, reposing trust and confidence in said Frederick Wesche, had respectively placed in his hands various sums of money and American securities belonging to them respectively in severalty, all derived as aforesaid by them severally from said Charles Ahrenfeldt, deceased, and all situate in this country, to be cared for by said Wesche as the agent of them respectively, with power to said Wesche to make investments and changes in investments thereof from time to time, with the approval of said Charles J. Ahrenfeldt, and with the understanding that said Wesche might likewise, along with such funds, invest other funds of his own, but that while the ownership of such securities and funds should at all times be kept several, the cash at any time on hand might be carried on deposit in the name of said Wesche although belonging to said several parties in their respective proportions.

XI.

This respondent further alleges, on information and belief, which information has been received by it since the first of November, 1920, that in January, 1913 it was agreed among said four parties (namely, said Wesche, said Charles J. Ahrenfeldt, said Helene J. von Schierholz and

said Lucy von Uxküll-Gyllenband) that certain securities and some cash then so held by said Wesche belonging to them in severalty, as aforesaid, should be deposited by him with this respondent, and that for convenience, in case of any supervening disability of said Wesche, such cash and securities should be deposited in the joint names of said Wesche and said Helene J. von Schierholz with power (as between themselves and this respondent) to either of them to withdraw the same; but with the definite understanding and agreement among all said four parties that said Helene J. von Schierholz should exercise such power only in case of disability of said Wesche, and then only subject to the like responsibility as he was at all times under, to return to any one of the respective owners, his or her securities and his or her part of the cash upon demand, but leaving with said Wesche power and authority in his own discretion at any time and from time to time to withdraw any and all securities or moneys depositd with this respondent.

XII.

This respondent further alleges, on information and belief, which information has been acquired by it since November 1, 1920 that all securities and cash so entrusted to said Wesche by said Helene J. von Schierholz and said Lucy von Uxküll-Gyllenband, respectively, were property derived by them respectively from their said father Charles Ahrenfeldt, deceased, or his estate, or securities into which property so derived by them

had been changed by them respectively, and that none of said property so owned by them, or either of them, deposited with this respondent in the joint names of said Wesche and said Helene J. von Schierholz was acquired by either of them, either directly or indirectly from any citizen or subject of Germany or Austro-Hungary, or of any country allied with either of those countries in the said war.

XIII.

This respondent further alleges on information and belief that pursuant to such arrangement between said Wesche, said Charles J. Ahrenfeldt, said Helene J. von Schierholz and Lucy von Uxküll-Gyllenband, the said Wesche and the said Helene J. von Schierholz in January, 1913, and thereafter, entered into a written agreement with this respondent, dated January 30, 1913, a copy of which is annexed hereto and made a part of this answer, marked Exhibit 1, and thereafter, to wit: in May, 1913, by written agreement between said Wesche and Mrs. von Schierholz and this respondent, said agreement was modified so as to provide that this respondent's commissions should be one per cent on income alone, instead of two per cent, as originally provided, and this respondent further alleges that all securities and monies so held by it involved in this proceeding are monies and securities deposited with it under and pursuant to the terms of said agreement as so modified, all sums of interest and dividends collected by it or credited by it from the said securities and balances of cash on hand in said deposits.

XIV.

This respondent further alleges that pursuant to such contract between this respondent and said Wesche and von Schierholz, there were deposited with this respondent sundry American securities and cash in 1913, which this respondent alleges, on information and belief, were deposited with it exclusively by said Frederick Wesche, and the same consisted of American securities and cash belonging respectively to said Wesche, and said Charles J. Ahrenfeldt, to said Helene J. von Schierholz and to said Lucy von Uxküll-Gyllenband, all of which had been previously held by said Wesche, part as individual owner of certain thereof and the remainder as the agent respectively of said Charles, of said Helene and of said Lucy, as several owners of such individual sums and securities respectively.

That thereafter certain slight changes in the securities were made and some bonds held in said deposit were paid off, and on December 19, 1917, the cash and securities so deposited with this respondent under said agreement with it as so modified, as hereinbefore alleged, consisted of the securities and monies set out in the alleged copy of this respondent's report of December 19, 1917, annexed to the petition. This respondent further alleges that it was a banking depository of such cash and a bailee of said securities and on information derived by it since October 1, 1920, which this respondent believes, this respondent further alleges that said cash and securities then held by it were held in severalty as follows:

Amended Answer of Commercial Trust Company.

1. *By said Wesche:*

Cash $1074.23
$10,000. bonds of Vancouver Lumber Co. Ltd.
2,000. " " Kings County Lighting Co.
3,000. " " Adirondack Electric Power Co.
5,000. " " Hudson Navigation Co.
15,000. " " Champion Lumber Co.
5,000. " " New Netherlands Theatre Co.
5,000. " " Duluth Street Railway Co.
24,000. " " Central Georgia Power Co.
6,000. " Fonda, Johnstown & Gloversville R. R. Co.
9,800. United States bonds of the 2d Liberty Loan.

2. *By said Charles J. Ahrenfeldt individually:*

Cash $303.73
$10,000. bonds of Vancouver Lumber Co., Ltd.
5,000. " " Hudson Navigation Co.
15,000. " " Champion Lumber Co.
5,000. " " New Netherlands Theatre Co.
5,000. " " Central Georgia Power Co.
5,000. " " Omaha Waterworks
8,000. United States bonds of the 2d Liberty Loan.

3. *By said Helene J. von Schierholz:*

Cash $1164.71
$5,000. bonds of Vancouver Lumber Co. Ltd.
7,000. " " Tacoma Eastern R. R. Co.
28,000. " " City of Chicago
5,000. " " Montreal Tramways Co.

5,000. " " Gulf & Ship Island Railway
5,000. " " Kings County Lighting Co.
5,000. " " City of Memphis bearing 4¼% interest
7,000. " " Adirondack Electric Power Co.
5,000. " " Norfolk Southern R. R. Co.
5,000. " " Champion Lumber Co.
10,000. " " Jersey City (Water)
2,000. " " Clearview Coal Co.
5,000. " " Duluth Street Railway Co.
5,000. " " Central Georgia Power Co.
5,000. " " Westchester Lighting Co.
42,000. Stock of the City of New York
16,500. United States bonds of the 2d Liberty Loan.

4. *By said Lucy von Uxküll-Gyllenband individually:*

Cash $2157.41
$5,000. bonds of Vancouver Lumber Co. Ltd.
2,000. " " Tacoma Eastern R. R. Co.
5,000. " " Gulf & Ship Island R. R. Co.
3,000. " " Kings County Lighting Co.
11,000. " " City of Memphis bearing 4½% interest
5,000. " " Champion Lumber Co.
10,000. " " Jersey City (Water)
3,000. " " Clearview Coal Co.
6,000. " " Duluth Street Railway Co.
6,000. " " Central Georgia Power Co.
10,000. " " Los Angeles Water Works
5,000. " " Westchester Lighting Co.

83,000. stock of the City of New York.
5,000. bonds of Omaha Water Works
18,700. United States bonds of the 2d Liberty Loan

That all said securities had been owned in severalty by the said several individuals as above set forth from a time prior to March 1st, 1914, save and except that:

1. Each of the said lots of Liberty Bonds had been bought with cash on hand then on deposit in said "Checking" account with this respondent, belonging to the individual so acquiring such bonds, on the 6th day of October, 1917.

2. Said Helene J. von Schierholz had acquired $2,000 of her Kings County Lighting Co. bonds, $5,000 of her Adirondack Electric Power Company bonds and her $2,000 Clearview Coal Company bonds on or about March 7th, 1914, and prior to August 1st, 1914, by purchase from said Charles J. Ahrenfeldt for cash belonging to her.

3. Said Lucy von Uxküll-Gyllenband had acquired her $3000. Kings County Lighting Co. bonds, her $3000. Clearview Coal Company bonds and her $6000. Duluth Street Railway Co. bonds on or about March 6, 1914 and prior to August 1st, 1914 by purchase from said Charles J. Ahrenfeldt, for cash belonging to her.

XV.

This respondent further alleges that by sales, changes, additions, withdrawals, maturities and

accruals of income, the said securities and monies since the making of said report of December 19, 1917, have been changed; annexed hereto and marked Exhibit 2 and made a part of this answer, is a list of the monies and securities in respondent's possession on October 1, 1920, held under said agreement of January 30, 1913, and said modification thereof, which list and amount has changed since that date only as additional coupons have been collected on the securities so held and the proceeds deposited to the credit of said trust accounts; and for earned additional interest from time to time on the said accounts.

XVI.

This respondent further alleges, on information and belief, that on October 1, 1920, the sums credited to said Trust Account, so held by this respondent above all commissions charged thereon pursuant to said agreement, amounted to the aggregate sum of $61,583.83, which sum belonged to the said Wesche, Ahrenfeldt, von Schierholz and von Uxküll-Gyllenband, respectively, and in severalty as follows:

To said Wesche	$12,924.99
To said Charles J. Ahrenfeldt, individually	8,862.16
To Helene J. von Schierholz, individually	19,063.99
To Lucy von Uxküll-Gyllenband, individually	20,732.69

and that on October 1, 1920, the balance to the credit of said Checking Account was $40,996.81, which sum belonged to

To said Wesche individually	$12,438.46
To said Charles J. Ahrenfeldt, individually	11,624.45
To said Helene J. von Schierholz, individually	8,345.31
To said Lucy von Uxküll-Gyllenband, individually	8,588.59

XVII.

This respondent further alleges, on information and belief, that of the sums so held on said Trust Account on October 1, 1920, all derived from the securities so held by this respondent, the following were the sources and the holdings, namely:

1. *Sums belonging to said Wesche individually*:

Principal of $5000. New Netherlands Theatre bonds paid off belonging individually to said Wesche	$5,000.00
Amounts of interest or coupons collected on the individual securities above described belonging to said Wesche individually so deposited with this respondent (less commissions of 1%)	7,526.77
Amounts of interest credited growing out of the above amounts credited to said Trust account be-	

longing to said Wesche individually (less commissions of 1%)	398.22
	$12,924.99

2. *Sums belonging to Charles J. Ahrenfeldt individually*:

Principal of $5000. New Netherlands Theatre bonds paid off belonging individually to said Charles J. Ahrenfeldt	$5,000.00
Amounts of interest or coupons collected on the individual securities above described belonging to said Charles J. Ahrenfeldt individually, so deposited with this respondent (less commissions of 1%)	3,639.53
Amounts of interest credited growing out of the above amounts credited to said Trust account belonging to said Charles J. Ahrenfeldt individually (less commissions of 1%)	222.63
	$8,862.16

3. *Sums belonging to Helene J. von Schierholz individually*:

Principal of $2000. Clearview Coal Company bonds paid off belonging individually to said Helene J. von Schierholz	$2,000.00

Amounts of interest or coupons collected on the individual securities above described belonging to said Helene J. von Schierholz individually, so deposited with this respondent (less commissions of 1%)	16,338.35
Amounts of interest credited, growing out of the above amounts credited to said account belonging to said Helene J. Schierholz individually (less 1% commissions)	725.64
	$19,063.99

4. *Sums belonging to Lucy von Uxküll-Gyllenband individually.*

Principal of $3000. Clearview Coal Company Bonds paid off belonging individually to said Lucy von Uxküll-Gyllenband on deposit with this respondent in January 1918	$3,000.00
Amounts of interest or coupons collected on the individual securities above-described belonging to said Lucy von Uxküll-Gyllenband individually, so deposited with this respondent (less commissions of 1%)	16,946.86
Amounts of interest credited to such Trust Account accruing on the above amounts credited to	

said account belonging to said Lucy von Uxküll-Gyllenband individually (less commissions of 1%)	785.83
	$20,732.69

XVIII.

This respondent further alleges, on information and belief that in addition to the said sums so held on October 1, 1920, additional coupons are from time to time collected belonging to said four several individuals, cut from their said respective securities, which belong to them respectively, in severalty, and additional interest is being earned on their several balances deposited in the said account, all of which belong to their respective interests therein.

XIX.

This respondent further alleges, on information and belief, that the securities still in the hands of this respondent so deposited with it now consist of the following securities owned, as this respondent is informed and believes, severally by the following individuals respectively:

1. *Securities owned by said Wesche individually.*

$2,000. bonds of Kings County Lighting Company

3,000. " " Adirondack Electric Power Company

5,000 " " Hudson Navigation Company
15,000. " " Suncrest Lumber Company
5,000. " " Duluth Street Railway
24,000. " " Central Georgia Power Company
6,000. " " Fonda, Johnstown & Gloversville R. R. Co.
9,800. United States bonds (2d Liberty Loan)

2. *Securities owned by said Charles J. Ahrenfeldt individually.*

$5,000. bonds of Hudson Navigation Company
15,000. " " Suncrest Lumber Company
5,000. " " Central Georgia Power Company
5,000. " " Omaha (Water Works)
8,000. United States bonds (2d Liberty Loan)

3. *Securities owned by said Helene J. von Schierholz individually.*

$7,000. bonds of Tacoma Eastern R. R. Co.
28,000. " " City of Chicago (City Hall 4s)
5,000. " " Montreal Tramways
5,000. " " Gulf & Ship Island Ry. Co.
5,000. " " Kings County Lighting Co.
5,000. " " the City of Memphis (4¼%)
7,000. " " " Adirondack Electric Power Company
5,000. " " the Norfolk Southern R. R. Co.
5,000. " " " Suncrest Lumber Company.

10,000. " " Jersey City, Water Works
5,000. " " The Duluth Street Railway
5,000. " " " Georgia Central Power Co.
5,000. " " " Westchester Lighting Company
42,000. stock of the City of New York.
16,500. United States bonds (2d Liberty Loan)

4. *Securities owned by said Lucy von Uxküll-Gyllenband individually.*

$2,000. bonds of Tacoma Eastern R. R. Co.
5,000. " " Gulf & Ship Island Ry.
3,000. " " Kings County Lighting Co.
11,000. " " the City of Memphis (4½%)
5,000. " " Suncrest Lumber Company
10,000. " " Jersey City—Water Works
6,000. " " Duluth Street Railway
6,000. " " Central Georgia Power Co.
10,000. " " City of Los Angeles (Water Works)
5,000 " " Westchester Lighting Company
83,000. stock of the City of New York
5,000. Bonds of Omaha (Water Works)
18,700. United States bonds (2d Liberty Loan)

That such securities so owned are in each instance accompanied by all coupons thereto belonging maturing since October 1st, 1920 (save as any such coupons have been collected since October 1st, 1920, and thereafter credited to said

Trust Account) and the coupons and any proceeds so collected and any interest accruing thereon are the several property of said several owners of the securities to which they pertain. All the said several securities herein mentioned other than the said United States bonds are securities issued by various American private or municipal corporations.

XX.

This respondent further alleges, on information, that the above named securities and the above described indebtedness and sums of cash so set apart, all of which are so claimed by said Frederick Wesche, by said Charles J. Ahrenfeldt, by said Helene J. von Schierholz and by said Lucy von Uxküll-Gyllenband respectively, are the identical securities, indebtedness, and particular funds of cash which the Alien Property Custodian, as petitioner herein, is asking to have directed turned over to him by order and decree of this Court upon his petition herein.

XXI.

This respondent further alleges, on information and belief, that Frederick Wesche, above named, is a resident of Territet, in the Canton of Vaud, in the Republic of Switzerland, where his address is Villa Supplitt, and that ever since the first week in August, 1914, he has been resident and domiciled in the Republic of Switzerland, first in Lucerne, Switzerland, up to January,

1920, and since then in said Territet, and that he has during all said period had, and now has, his domicile in said Switzerland. That up to the time of taking up his residence and domicile in Switzerland, as aforesaid, said Wesche for more than thirty years had continuously resided and been domiciled in Paris, France; ant that for more than thirty-five years last past said Wesche has not at any time been domiciled in or resident in either Germany, or any part thereof, or in any country which was an ally of Germany in the war which broke out between Germany and France and other countries in August, 1914, and into which the United States entered in April, 1917, nor has said Wesche during any part of such period and particularly long since July 1, 1914, been doing business in Germany or Austro-Hungary, or in any country which was an ally of Germany or Austro-Hungary in such war, and that he is not doing business in any such place now, nor as this respondent is informed and believes, has said Wesche at any time for more than forty years past and particularly since January 1, 1914, been an officer, official or agent of the Government of Germany, or of that of Austro-Hungary, or of any government of any nation with which the United States is now, or has since January 1, 1900, at any time been at war, or of any nation allied either with Germany or Austro-Hungary in such war, or of any political or municipal subdivision of either Germany or Austro-Hungary, or of any such government or nation, and that said Wesche is not and never has been

an enemy of the United States nor has he been within the United States at any time since 1913 or resident in any judicial district of United States.

XXII.

This respondent further alleges, on information acquired by it since November 1, 1920, and on belief therein, that said Wesche was at all times since 1900 and still is the agent of said Charles J. Ahrenfeldt, of said Helene J. von Schierholz and of said Lucy von Uxküll-Gyllenband, in charge of their said respective securities and monies, and holder of his own, and that this relation was not changed by the arrangement for deposit of said securities and cash in the joint names of said Wesche and said Helene J. von Schierholz with this respondent any further than this: that she should be able to act as alternate for said Wesche in withdrawing such securities and cash in event of the death or other disability of said Wesche and that it was a term of the arrangement between the said Wesche, Ahrenfeldt, von Schierholz and von Uxküll-Gyllenband for such deposit with this respondent in the joint names of said Wesche and said Helene J. von Schierholz, that she should act only as such alternate in such event and that she was given such power by the others only upon that trust. This respondent further alleges that said Helene J. von Schierholz has not at any time from the inception of such deposit in January, 1913, interfered in any way with the deposit

of securities and cash made with this respondent, but at all times this respondent has received all orders and instructions and directions concerning such deposit solely from the said Frederick Wesche or his authorized representatives.

XXIII.

This respondent further alleges, on information and belief, that the application of the petitioner herein to seize all such funds and securities under the power conferred upon said Helene J. von Schierholz by the making of the deposit in the joint names of said Wesche and herself pursuant to the said agreement of January, 1913, is contrary to the terms of the arrangement and trust under which she was made a co-depositor, and under which such deposits with this respondent were made by the said Wesche, namely, that she should act only as such alternate, and only in the event of the death or disability of said Wesche, and that such attempt is in breach of the trust duties and relations imposed on her by such arrangement, to all of which the petitioner herein would, if he could have taken over her said power, have ipso facto been subject; that said Wesche has not at any time been under any disability to act, and neither the time nor the occasion when said Helene J. von Schierholz would be justified in withdrawing any of said cash or securities by virtue of the deposit in the joint names of said Wesche and herself under said agreement of January, 1913, as modified, has ever arisen; and that the attempt of the Custodian to

obtain such funds and securities by virtue of her being so named as joint depositor, and by virtue of the provisions of the agreement with this respondent hereto annexed, if he had the power to exercise the power held by said Helene J. von Schierholz, was a breach of the trust duties assumed by her (upon the assumption of which alone she was named as such joint depositor on the terms stated in such contract with this respondent), and in fraud of the rights of the other real owners of said property.

XXIV.

This respondent further alleges that said Wesche by his attorney in fact, Selden Bacon, of the City of New York, prior to the institution of these proceedings and in July, 1920, demanded of the respondent that it pay over and deliver to said Wesche, or to his said attorney in fact, the securities and monies above mentioned.

XXVI.

This respondent further alleges that one Ernest T. Greiner, residing in the City of New York, prior to the institution of these proceedings, notified this respondent that he claims a lien on all the funds and securities on deposit with respondent, standing in the names of said Frederick Wesche and Helene J. von Schierholz under the said deposit agreement annexed hereto, and on all interest or increment due or becoming due thereon, and has demanded of respondent that

none of said property be transferred or otherwise disposed of until further notice from him.

That said Greiner was attorney in fact for the said Wesche from the year 1913 to May 18, 1920, acting for the said Wesche in connection with the monies and securities above mentioned so deposited with this respondent and held by it as aforesaid. This respondent does not know on what basis the said Greiner claims such lien and has been notified by the said Wesche and said Ahrenfeldt, by Selden Bacon, their attorney in fact, not to deliver any of said monies or securities to the said Greiner, and that said Greiner has no rights in or to the same.

XXVI.

This respondent is informed by the said Wesche and the said Ahrenfeldt, by Selden Bacon, their attorney in fact, and by the said Greiner, that they respectively are desirous of intervening in this proceeding and of setting up and establishing their rights to the monies and securities above mentioned. That this respondent while so informed by said Wesche and said Ahrenfeldt, through their said attorney Selden Bacon, of the nature of the holdings of the said Wesche, has no knowledge thereof, and is entirely ignorant of the nature of the claims of said Greiner, or of any basis therefor.

XXVII.

This respondent further alleges, on information and belief, that had said A. Mitchell Palmer, or

the petitioner, his successor, as Alien Property Custodian, or their or either of their representatives at any time either in 1918, 1919, 1920 or 1921, made due inquiry or investigation into the rights to the said funds and securities so deposited with this respondent and to the sums so on deposit with it, or into the ownership or tenure thereof, the foregoing matters would have been promptly and fully disclosed to them; that none of them made any investigation whatever into the ownership or tenure or conditions thereof beyond obtaining the said report of December, 1917, from this respondent.

This respondent further alleges on information and belief that no investigation and no determination after investigation of the ownership or holding of the securities and monies in the hands of this respondent hereinbefore described, such as was contemplated by the provisions of the Trading with the Enemy Act has ever been made either by the former Alien Property Custodian, or by the present Alien Property Custodian, the petitioner herein, or by any representative of either, and this respondent calls attention to the fact that the petitioner in his petition herein, while carefully alleging that the said A. Mitchell Palmer as Alien Property Custodian did investigate and after investigation determine that said Helene J. von Schierholz was in 1918 an enemy of the United States, has equally carefully avoided making any allegation that either said Palmer as such Alien Property Custodian, or the said petitioner himself, his successor or the subordinates of either of them, have either investi-

gated or determined after investigation that the indebtedness of this respondent and the property mentioned in its possession belonged to or was owing to or was by this respondent held for, by, on account of, or for the benefit of said Helene J. von Schierholz.

XXVIII.

This respondent further alleges that the claims of said Wesche and said Ahrenfeldt, and said Wesche claims the right to the possession of all of the said property as partial owner thereof and as agent of the other owners, have been asserted to it without any collusion on the part of this respondent, and that for its due protection, all of the said claimants except Greiner being non-residents of the United States, it is essential that they and each of them be cited into this proceeding for the determination of their rights thereto.

WHEREFORE this respondent prays:

1. That the said Wesche, the said Ahrenfeldt and the said Greiner be each of them joined as defendants in this proceeding and cited into it and required to set up their respective rights in and to the said monies and securities for the determination of the same by this court, or in lieu thereof, be permitted to intervene therein voluntarily.

2. That it be determined by this court what, if any, portion of the said property belongs to

each of the several persons alleged to have been interested therein, namely, said Wesche, said Charles J. Ahrenfeldt, said Helene J. von Schierholz, said Lucy von Uxküll-Gyllenband and said Ernest T. Greiner, and that the status and rights of each be determined pursuant to law. That respondent's commissions be ascertained and determined and the respondent be ordered to pay to itself its commissions and a counsel fee to be fixed by this court, and that respondent be ordered to convey, transfer, assign, deliver and pay over the balance of the monies and securities to persons entitled thereto; that each and all the other parties to the proceedings be enjoined from asserting any and all further claims against this respondent for the property when so turned over, and be enjoined from molesting or annoying this respondent with respect thereto, and that this respondent have such other and further relief as may be just in the premises and agreeable to equity.

FISK & FISK,
Solicitors for Respondent,
Commercial Trust Company of New Jersey,
Office and Post Office Address,
15 Exchange Place,
Jersey City, N. J.

Commercial Trust Company of New Jersey,
Per J. V. PERKINS,
Vice-President.

Attest
R. S. CARMICHAEL,
(Corporate Seal.) Secretary.

Amended Answer of Commercial Trust Company.

STATE OF NEW JERSEY,
COUNTY OF HUDSON, } ss.:

R. S. CARMICHAEL, being duly sworn, according to law on his oath deposes and says that he is secretary and treasurer of the Commercial Trust Company of New Jersey, the respondent in the above suit; that to the best of his knowledge, information and belief the matters contained in the foregoing answer of Commercial Trust Company of New Jersey, so far as concerns the acts and deeds of said Company are true, and that therein relates to the acts or deeds of any other person deponent believes it to be true.

Deponent further says that the seal on the foregoing answer is the seal of the Commercial Trust Company of New Jersey; that the same was affixed thereto by authority of its Board of Directors and that the said answer was signed by the President of said Commercial Trust Company of New Jersey and by this deponent by like authority.

R. S. CARMICHAEL.

Subscribed and sworn to before me
this 21st day of February, 1921

SAMUEL TARTALSKY,
Attorney at Law of New Jersey.

Exhibit 1.

RECEIVED, Jersey City, January 30, 1913, for the account of Frederick Wesche, of Paris, France, and Helene J. v. Schierholz, of Plaue, Thuringen, Germany, the bonds particularly set out in the schedule or list hereto annexed, and having a par value of five hundred and twenty-four thousand dollars ($524,000) to be held for the joint account of the said Frederick Wesche and Helene J. v. Schierholz, and to collect the interest to become due and payable on said bonds for the joint account of the said Frederick Wesche and Helene J. v. Schierholz and to deliver over said bonds from time to time as requested, to the said Frederick Wesche, or to the said Helene J. v. Schierholz, or to the survivior of them, it being understood that the said bonds and the said interest money to be collected thereon are to be held and collected and delivered or paid over to either the said Frederick Wesche or to the said Helene J. v. Schierholz or to the survivor of them. Upon all interest moneys collected on said bonds there is to be retained by the undersigned for its services in the premises 2% of the amount so collected; htis receipt is executed in triplicate.

COMMEECIAL TRUST COMPANY OF NEW JERSEY,
By J. W. Hardenbergh,
President.

Attest:
Wm. J. Field,
(Seal) Secretary.

Exhibit 1—Annexed to Amended Answer of Commercial Trust Company.

The deposit of the bonds with the Commercial Trust Company of New Jersey and the terms upon which said Trust Company is to hold and deliver over the said bonds and to collect and pay over the interest thereon as set forth in the above receipt is hereby ratified and confirmed.

Dated, February , 1913.

FR. WESCHE,
HELENE J. v. SCHIERHOLZ.

$5,000. Corporate Stock of the City of New York, 4½%, due September 1, 1960, #11299 V13 to 11303 V13 inclusive.

$5,000. Corporate Stock of the City of New York, 3½%, due May 1, 1954, #30008 to 30012 inclusive. For the payment of assessments, etc.

$30,000. Corporate Stock of the City of New York, 3½%, due November 1, 1955, #80 V3 to 82 V3, 151 V3 to 153 V3, #156, 157 V3, 10143 to 10152 V3, 10415 to 10418 V3 #10420 to 10427 V3 inclusive.

$41,000. Corporate Stock of the City of New York, 3½.., due November 1, 1954, #2270 V2 to 2273 V2, 2365 V2 to 2368 V2, 2375 V2, 7700 to 7714 V2, 7742 V2, #10521 to 10525 V2.

$44,000. Corporate Stock of the City of New York, 3½% due November 1, 1954, #655 W to 698 W inclusive. To provide for the supply of water.

Exhibit 1—Annexed to Amended Answer of Commercial Trust Company.

$5,000. Corporate Stock of the City of New York, 3½%, due May 1, 1954, #25520 to 25524 inclusive, for the extension of Riverside Drive to Boulevard Lafayette.

$10,000. New Netherlands Theatre Company, 6%, due May 1, 1920 #226 to 235 inclusive.

$9,000. Tacoma Eastern Railroad Company, First Mortgage, 5%, due January 1, 1923, #462 to 470 inclusive.

$5,000. City of Los Angeles, 4½%, due December 1, 1925, #9522 to 9526 inclusive.

$5,000. City of Los Angeles, 4½%, due December 1, 1933, #11349 to 11353 inclusive.

$5,000. Long Island City $500. bonds, 4½%, Series 2, due April 1, 1914, #B91 to B100 inclusive.

$10,000. Richmond & Danville Railroad Company Consolidated Mortgage, 6%, due January 1, 1915, #4211, 5866 to 5874 inclusive.

$6,000. Fonda, Johnstown & Gloversville First Consolidated General Refunding 4½%, due 1952, #2360 to 2365 inclusive.

$3,000. Chicago, Rock Island & Pacific, First Refunding 4%, due April 1, 1934, #10140, 10141, 55267.

$20,000. City of Jersey City, Water 4½%, due October 1, 1961, #2165, to 2174, 2176 to 2185 inclusive.

$10,000. Peoples Coal Company, First Mortgage, 6%, due October 15, 1918, #251 to 260 inclusive.

Exhibit 1—Annexed to Amended Answer of Commercial Trust Company.

$20,000. Peoples Coal Company, First Mortgage, 6%, due April 15, 1919, #261 to 280 inclusive.

$40,000. Central Georgia Power Company, First Mortgage 5%, due May 1, 1938, #M1943 to 1956 inclusive, M1927 to M1942 inclusive, $1,000. bonds; $500. bonds, D2912 to 2931 inclusive.

$15,000. Westchester Lighting Company, first mortgage 5%, Due 1950, 1905, 1906, 2387, 3277, 3411, 3412, 3413, 3769, 3770, 3771, 2388, 3811 to 3814 inclusive.

$12,000. Norfolk Southern Railroad Company, First Refunding, Series A, 5%, due February 1, 1961, #M1381 to M1390, M5753, 5754.

$2,000. Baltimore & Ohio First 4s, due July 1, 1948, M5906, M28384.

$40,000. Champion Lumber Company, First Mortgage, 6%, due October 1919—M1012 to M1016 inclusive, due October 1920—M1218 to M1222 inclusive, due October 1921—M1427 to M1431 inclusive, due October 1922—M1632 to M1636 inclusive, due October 1923—M1837 to M1841 inclusive, due October 1924—M2044 to M2048 inclusive, due October 1925—M2250 to M2254 inclusive, due October 1926—M2457 to M2461 inclusive.

$16,000. Board of Education of the Memphis City Schools, Tenn. 4¼%, due July 1, 1959, #134, 135, 136, 231, 267, 397, 399, 405 to 412, 414, 415, 268.

Exhibit 1—Annexed to Amended Answer of Commercial Trust Company.

$11,000. Board of Education of the Memphis City Schools, Tenn. 4½%, due July 1, 1961, #232 to 242 inclusiwe.

$30,000. Vancouver Lumber Company, Limited, First Mortgage Gold, due January 1, 1918, 6%, #229 to 237, 239 to 253, 255 to 260 inclusive.

$20,000. Duluth Street Railway Company, First Mortgage 5%, due May 1, 1930, #1982 to 1993, 2067 to 2069, #1, 2, 3, 4, 5.

$28,000. City of Chicago, City Hall bonds, 4%, due January 1, 1923, #1611 to 1619, 1676 to 1682 inclusive; due January 1, 1925, #2297, 2298; due January 1, 1926, #2489 to 2495, 2528 to 2530 inclusive.

$10,000. Kings County Lighting Company, First Refunding, 5%, due July 1, 1954, #2131 to 2134, 2137 to 2141, 2354.

$10,000. Hudson Navigation Company 6%, due February 1, 1938, #116 to 118, 605, 606, 1143 to 1147 inclusive.

$10,000. Adirondack Electric Power Corporation, First Mortgage 5%, due January 1, 1962, #3949 to 3952, #4156 to 4159, 4216, 4217.

$10,000. City of Seattle, Funding, 5%, due July 1, 1913, #425 to 429, 489 to 493 inclusive.

$10,000. State of Tennessee, Settlement, 3%, due July 1, 1913, #7447 to 7453, 11586 to 11590 inclusive.

Exhibit 2—Annexed to Amended Answer of Commercial Trust Company.

$10,000. Gulf & Ship Island Railroad Company, First Mortgage Refunding, Terminal, 5%, due February 1, 1952, #311 to 313, 320, 456 to 458, 780, 781, 1817.

$10,000. Montreal Tramways Company, First Refunding 5%, due July 1, 1941, M4111 to M4120 inclusive.

$5,000. Clearview Coal Company, Scranton, Pa., First Mortgage, 6%, due April 15, 1919, #93 to 97 inclusive.

Current coupons attached to all of the above bonds, except coupons due February 1, 1913.

Exhibit 2.

List of securities held by Commercial Trust Company of New Jersey, October 14th, 1920, for account of Frederick Wesche and Helene J. Von Schierholz under deposit agreement, dated January 30th, 1913, as of October 15, 1920.

	Par	*Rate*	*Interest Payable*
9,000 Tacoma Eastern R.R. Co. 1st Mtge. 5% Gold Bonds, Nos. 462-470	9,000	5	Jan'y & July 1
28,000 City of Chicago, City Hall, 4% Bonds, Nos. 1611-9, 1676-82, 2297-8, 2489-95, 2528-30	28,000	4	"

Exhibit 2—Annexed to Amended Answer of Commercial Trust Company.

5,000 Montreal Tramways Co. 1st Refdg. 5% Gold Bonds, Series A, Nos. 4116-20	5,000	5	"
10,000 Gulf & Ship Island R.R. Co. 1st Mtge. Refdg. & Terminal 5% Gold Bonds, Nos. 311-3, 320, 456-8, 780-1, 1817	10,000	5	"
10,000 Kings County Lighting Co. 5% Refdg. 1st Mtge. Gold Bonds, Nos. 2131-4, 2137-41, 2354	10,000	5	"
5,000 Board of Education of the Memphis City Schools 4¼% Bonds Nos. 134-6, 267-8	5,000	4¼	"
11,000 Board of Education of the Memphis City Schools 4½% Bonds, Nos. 232-42	11,000	4½	"
10,000 Adirondack Electric Power Corpn., 1st Mtge. 5% Gold Bonds, Nos. 3949-52, 4156-9, 4216-7	10,000	5	"
5,000 Norfolk Southern R.R. Co. 1st & Refdg. Mtge. 5% Bonds Series A, Nos. M1386-90	5,000	5	Feby. & August 1
10,000 Hudson Navigation Co. 6% Gold Mtge. Bonds Nos. 116-8, 605-6, 1143-7	10,000	6	"

Exhibit 2—Annexed to Amended Answer of Commercial Trust Company.

20,000 City of Jersey City Water 4½% Gold Bonds Nos. 2165-74, 2176-85	20,000	4½	Apr. & Oct. 1
16,000 The Duluth St. Ry. Co. 5% 1st Mtge. Gold Bonds, Nos. 1-5, 1082-1091, 2069	16,000	5	May & Nov. 1
40,000 Central Georgia Power Co. 1st Mtge. S.F. 5% Gold Bonds, Nos. $500 Bond D2912-31, $1,000 Bond M1927-56	40,000	5	May & Nov. 1
6,000 Fonda, Johnstown & Gloversville R.R. Co. 1st Con. Genl. Refdg. Mtge. 4½% Gold Bonds, Nos. 2360-5	6,000	4½	"
10,000 City of Los Angeles Water Works, 4½% Bonds Class F, Nos. 9522-6, 11349-53	10,000	4½	June & Dec. 1
10,000 Westchester Lighting Co. 1st Mtge. 5% Gold Bonds, Nos. 3411-3, 3769-71, 5811-4	10,000	5	"
5,000 Corporate Stock of the City of New York for the Extension of Riverside Drive, Nos. 25520-4	5,000	3½	May & Nov. 1
5,000 Corporate Stock of the City of New York for the payment of Assessments, Nos. 30008-12	5,000	3½	"

Exhibit 2—Annexed to Amended Answer of Commercial Trust Company.

41,000 Corporate Stock of the City of New York, Nos. 2270-2273, 2365-2368, 2375, v2 v2 v2 v2 v2 2398, 2716, 2722, 2724-2726, v2 v2 v2 v2 v2 7700-7714, 7742, 10521- v2 v2 v2 v2 10525 v2	41,000	3½	"
44,000 Corporate Stock of the City of New York to Provide for the Supply of Water, Nos. 655-698	44,000	3½	"
30,000 Corporate Stock of the City of New York, 80-2, 151-3, 156-7, 10143-52, 10415-18, 10420-7, v3 under all Nos.	30,000	3½	"
10,000 Omaha Water Works of the City of Omaha Nos. 7058, 7025-33	10,000	4½	Jany. & July
53,000 U. S. of America 4½% Second Conv. Liberty Loan Bonds	53,000	4½	May & Nov. 15
40,000 Suncrest Lumber Co. income mortgage bonds	40,000	6	Apr. & Oct. 1
Cash			
Capital account	$15,000		
Income "	46,582.83		
Frederick Wesche & Helene J. Von Schierholz check acct.	40,996.81		

(Endorsed) Filed Feb. 21, 1921, at o'clock A. M. George T. Cranmer, Clerk.

Praecipe for Appearance of Frederick Wesche.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

FRANCIS P. GARVAN, as Alien Property Custodian,
Petitioner,

against

COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation,
Respondent.

In the Matter of the Application of Francis P. Garvan, as Alien Property Custodian, in re: certain stocks, bonds, securities and money in the hands of the respondent, Commercial Trust Company of New Jersey.

SIR:

Please file this praecipe for appearance for Frederick Wesche as petitioner for leave to intervene in the above matter, and enter my appearance for him as such petitioner.

February 21, 1921.

Yours respectfully,

Praecipe for Appearance of Frederick Wesche.

SELDEN BACON,
Solicitor for Frederick Wesche,
Petitioner for Leave to Intervene
Office & Post Office Address,
43 Exchange Place,
Borough of Manhattan,
New York City.

Office in the District of New Jersey for Service of Papers.
FISK & FISK,
15 Exchange Place,
Jersey City, N. J.

To:
GEORGE T. CRANMER, Esq.,

Clerk of the United States District Court for the District of New Jersey.

Endorsed—Filed Feb. 21, 1921 at 4 o'clock P. M.
GEORGE T. CRANMER,
Clerk.

Petition of Frederick Wesche for Leave to Intervene.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

FRANCIS P. GARVAN, as Alien Property Custodian,
Petitioner,

v.

COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation,
Respondent.

In the Matter of the Application of Francis P. Garvan, as Alien Property Custodian, in re: certain stocks, bonds, securities and money in the hands of the respondent.

NOW comes FREDERICK WESCHE, of Territet, Switzerland, named in the petition herein of the Alien Property Custodian and in the answer interposed by the Commercial Trust Company of New Jersey, and shows to this Court that he repeats and states as part of this petition, as fully as if here set forth and repeated at length, all the denials and matters alleged in his annexed proposed answer, Exhibit A hereof, as intervener, and makes them all part of this petition.

Petition of Frederick Wesche for Leave to Intervene.

This petitioner proffers the said answer and asks leave to intervene herein and file the said answer and that he be heard upon the petition of the Alien Property Custodian herein, *pro interesse suo,* both by virtue of his rights as bailor and principal of said Commercial Trust Company of New Jersey, and as individual separate beneficial owner of a large part of the securities and moneys on hand, held by said Commercial Trust Company of New Jersey, and of the indebtedness from that Company, all sought to be reached by the said Alien Property Custodian as petitioner herein, and as the agent charged with the custody and possession of the securities and funds of his own several principals, Charles J. Ahrenfeldt, Helene J. Von Schierholz and Lucy von Uxküll-Gyllenband involved in this proceeding, and as being in possession through his said bailee, the Commercial Trust Company of New Jersey of the said securities and checking and Trust Accounts, described in the annexed proposed answer and in the petition herein, and as creditor entitled to the sums due upon the checking and trust accounts therein mentioned and described.

WHEREFORE, your petitioner prays that he be allowed to intervene and file his annexed proposed answer to the petition of the Alien Property Custodian herein, *pro interesse suo,* that an examination and inquiry into this petitioner's rights and interests in the property and indebtedness sought to be recovered by the Alien Property Custodian

be had; and that your petitioner have such other and further relief as may be just.

FREDERICK WESCHE, Petitioner,
BY SELDEN BACON,
His Attorney in Fact.

SELDEN BACON,
Solicitor for Petitioner and
Counsel,
Office & Post Office Address:
No. 43 Exchange Place,
Borough of Manhattan,
New York City.

Office in the District of New Jersey for service of papers, Fisk & Fisk, Esqs., 15 Exchange Place, New Jersey, N. J.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.:

SELDEN BACON, being first duly sworn, deposes and says that he resides at 50 Vanderbilt Avenue, New York City, that he is a member of the Bar of this Court, and is the solicitor for the above named Frederick Wesche and his agent in this country, holding full power of attorney from said Wesche authorizing deponent to intervene in his behalf in this proceeding. Deponent further says that the reason that the foregoing petition is not verified by the said Wesche in person is that he is absent from the United States and in Switzerland, where he resides.

Deponent further says that he has read the foregoing petition and knows the contents thereof; that the matters therein stated are true to the

best of his knowledge, information and belief; that the matters alleged are true to his own knowledge, save and except those matters therein stated to be alleged on information and belief, and that as to those matters they are in accordance with his information and he believes them to be true.

Deponent further says that the sources of his information and grounds for his belief are correspondence with the said Frederick Wesche and with Charles J. Ahrenfeldt named in the said petition; personal conversations with said Frederick Wesche and said Charles J. Ahrenfeldt; correspondence and personal conversations with R. Newton Crane, Esq., a barrister of the Middle Temple of London, England, English Counsel for said Charles J. Ahrenfeldt and Frederick Wesche, and copies of the accounts kept by said Wesche of the funds held by him and of the accounts kept by the Commercial Trust Company of New Jersey, both of said Checking Account and said Trust Account, and statements made to this deponent by the officers of said Commercial Trust Company of New Jersey and its Counsel, Mr. Anderson, also the petition of the Alien Property Custodian herein.

SELDEN BACON,

Subscribed and sworn to before me this 26 day of January, 1921.

O. V. W. HAWKINS,
Notary Public, Nassau Co., New York.
Certificate filed in N. Y. Co. No. 4
N. Y. Co. Register's No. 2202.

(Notarial Seal)

Proposed Answer of Frederick Wesche.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

FRANCIS P. GARVAN, as Alien Property Custodian, Petitioner, v. COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation, and FREDERICK WESCHE, Intervener, Respondents.	Answer of Frederick Wesche.
In the Matter of the Application of Francis P. Garvan, as Alien Property Custodian, in re: certain stocks, bonds, securities and money in the hands of the respondent, Commercial Trust Company of New Jersey.	

The answer of Frederick Wesche, above-named intervener and respondent (interposed by leave of court first had and obtained), to the petition of the above-named petitioner, Francis P. Garvan, as Alien Property Custodian.

This respondent, on information and belief, says:

Proposed Answer of Frederick Wesche.

1.

This respondent is not a citizen of the United States but is a citizen of Germany and is a resident of Territet, in the Canton of Vaud, Switzerland, where his address is Villa Supplitt, and that ever since the first week in August, 1914, he has been resident and domiciled in the Republic of Switzerland, first in Lucerne, Switzerland, up to January, 1920, and since then in said Territet, and has during all said period had, and now has, his domicile in said Switzerland. Up to the time of taking up his residence and domicile in Switzerland as aforesaid this respondent for more than thirty years had continuously resided and been domiciled in Paris, France.

For more than thirty-five years last past this respondent has not at any time been domiciled in or resident in either Germany, or any part thereof, or in any country which was an ally of Germany in the war which broke out between Germany and France and other countries in August, 1914, and into which the United States entered in April, 1917, nor has he during any part of such period, and particularly not since July 1st, 1914, been doing business in Germany or Austro-Hungary, or in any country which was an ally of Germany or Austro-Hungary in such war, and that he is not doing business in any such place now. Nor has this respondent at any time for more than forty years past, and particularly since January 1st, 1914, been an officer, official or agent of the Government of Germany, or of that of Austro-Hungary or of any government of any Na-

tion with which the United States is now or has since January 1, 1900, at any time been at war, or of any Nation allied either with Germany or Austro-Hungary in such war, or of any political or municipal subdivision of either Germany or Austro-Hungary or of any such government or nation. And this respondent is not and never has been an enemy of the United States, nor has he been within the United States at any time since 1913.

2.

This respondent admits the allegations contained in paragraphs numbered I and II of the petition of the above-named petitioner herein.

3.

This respondent has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph III of the petition of the above-named petitioner herein, save and except only that this respondent is informed and believes that in the month of December, 1917, the above-named Commercial Trust Company of New Jersey, not knowing the real facts beyond the securities and sums on deposit with it, and the contracts under which such deposits were made with it, made a report to the then Alien Property Custodian, which it made for the purpose of safeguarding itself from liability to the United States of America, should it thereafter be determined upon competent evidence and

proofs by competent authority that Helene von Schierholz in said petition named was an enemy and that such securities, or any part thereof, belonged to her, or said sums or any part thereof were owing to her. This respondent has no knowledge or information sufficient to form a belief whether Exhibit A of the said petition herein is a true and correct copy of the report so filed or whether the file number thereof is No. 8393 as alleged in the petition, but this respondent alleges on information and belief that such report so made was filed in the office of the Alien Property Custodian prior to March 1st, 1918, and was in the possession of the Alien Property Custodian long prior to the signature of the original paper of which Exhibit B of the said petition purports to be a copy; and that said report contained a copy of the agreement under which said securities and funds were deposited with said Commercial Trust Company, which agreement is substantially in the words shown in Schedule C of said Exhibit A of the petition, save that by subsequent agreement the rate of the Trust Company's compensation was on or about May 27th, 1913, reduced to 1 per cent. on the income; and that said Trust Company by such report asserted and informed the then Alien Property Custodian that the said Commercial Trust Company was not a Trustee, but a bailee for hire of the securities and a mere banking depositary of the funds deposited with it, and that said Helene von Schierholz was not the sole owner of said securities or said funds, nor were the same due to her, and that the same were not held by her or for her, or her sole

behalf, or her sole account, or for her sole benefit, but that she had no more than a fractional interest therein, and that this respondent was at least a co-owner thereof, and also beneficially interested therein; and gave notice and presumptive evidence to said Custodian that this respondent was not an enemy of the United States, and advised said Custodian of the address it had for this respondent, through which address this respondent could readily have been reached, and due inquiry as to the facts made of him.

This respondent admits and on information and belief alleges: That said Commercial Trust Company of New Jersey did on December 19th, 1917, hold, deposited with it, under and pursuant to the terms of the agreement set forth in Schedule C of Exhibit A of the petition herein, the securities described in Schedule E of Exhibit A of the Custodian's petition herein; and there had been deposited with said Trust Company by this respondent under the terms of the said agreement (save and except only that said agreement had been modified in writing on May 27th, 1913, by changing the rate of compensation for the services of the said Trust Company from two per cent. to one per cent. on income alone and without any charge on the corpus of the estate), and there then stood to the credit of the so-called Checking Account in the joint names of this respondent and said Helene von Schierholz the sum of $4700.08, due this respondent, as stated in said Exhibit A of the petition.

This respondent, on information and belief, denies each and every allegation contained in said

paragraph III of said petition, save as hereinbefore expressly admitted and demands that the petitioner make due proof thereof.

4.

Answering paragraph IV of the petition of the above-named petitioner, this respondent admits and on information and belief alleges that the Commercial Trust Company had on March 28th, 1919, to the credit of the so-called Checking Account mentioned in said paragraph IV, which so ran in the joint names of this respondent and Helene J. von Schierholz, a balance of $39,190.76 and to the credit of the so-called Trust Account therein mentioned a balance of $18,159.69. This respondent has no knowledge or information sufficient to form a belief as to the allegations in said paragraph IV of reports made to the petitioner by said Commercial Trust Company, and asks that the petitioner make due proof thereof.

This respondent denies on information and belief that the so-called checking account for $39,190.76 and the so-called trust account of $18,159.69 referred to in paragraph IV of the said petition were held in the manner therein alleged to have been reported by the respondent to the Alien Property Custodian or otherwise than as herein stated and set forth.

5.

This respondent, answering paragraph V of the petition herein says he is informed and believes

that on or about July 8th, 1918, there was delivered to the respondent Commercial Trust Company a paper of which Exhibit B of the petition purports to be a copy.

This respondent, on information and belief, alleges that A. Mitchell Palmer did not, as Alien Property Custodian, either personally or otherwise, prior to the said delivery of said paper Exhibit B, or at any time, investigate or determine after investigation that the securities and monies mentioned in said Exhibit B of the petition, or any of them, were either owing to or belonging to or held for, by, on account of, or on behalf of, or for the benefit of Helene J. von Schierholz, and alleges on information and belief that no investigation of the ownership or conditions of tenure thereof, or any thereof, aside from receiving such report from the Trust Company, was made or attempted by said Palmer as such Custodian, or on his behalf; and further alleges on information and belief that the information of the possession by the respondent Commercial Trust Company of New Jersey of such funds and securities specified in the report made by it to the Alien Property Custodian in December, 1917, as to which Exhibit B of the petition recites that such decision was made by said Palmer as such Alien Property Custodian after investigation, was derived solely from the report so made to him by said Commercial Trust Company of New Jersey, and such report itself contained and conveyed to said A. M. Palmer as such Alien Property Custodian information and notice that this respondent was both an owner and a holder at law and interested as a

beneficial owner in the securities held and money owned by the said Commercial Trust Company, described and mentioned in said report, and put said Palmer as such Custodian on inquiry as to the ownership of said securities and accounts, and the persons by and for whom and for whose account and benefit the same were held, and required of him investigation of the facts, especially through the sources of which said Trust Company so advised him.

This respondent further alleges on information and belief that neither said Palmer as such Alien Property Custodian, nor the petitioner, his successor, nor any of their respective subordinates, ever made any inquiry of this respondent or of any one representing him, or attempted to make any inquiry of him or of any one representing him, as to the rights of this respondent in such securities or funds, or ever investigated or attempted to investigate the rights of this respondent in such securities or funds or to ascertain any of the facts concerning the beneficial ownership of such securities, funds, and indebtedness, all of which could have been readily ascertained by said Palmer, had he inquired as to the facts as to ownership and tenure of such property and indebtedness, of this respondent, whose Paris address had been so furnished to said Palmer as such Custodian; that any inquiries addressed to this respondent at his said Paris address since his departure to Switzerland have at all times been regularly forwarded to this respondent at his Swiss address, and this respondent's said Swiss address was at all times after his removing to

Switzerland in August, 1914, promptly furnished to any and all inquirers for him at his former Paris address; that so far as any pretended investigation was made or any information was secured by said Palmer as such Alien Property Custodian either personally or officially, such information had disclosed to him, prior to June 1st, 1918, not only that this respondent was a person to whom said securities legally belonged at least in part, and to whom said sums of money were legally owing and payable by said Commercial Trust Company of New Jersey, and for whose benefit and account and in whose behalf they were held; but had also disclosed to said Custodian that this respondent was at least in part the beneficial owner of said funds and securities and that said Helene von Schierholz was at most a beneficial owner of only a part thereof; that disregarding such information and without communication with this respondent or affording him any opportunity to be heard or to show his rights, and without inquiry or investigation, the said Alien Property Custodian secretly, without evidence to support his pretended conclusion, and without making the investigation required by law; and contrary to the information he had in his possession and to the proofs and notice that were before him of the rights of this respondent, and in fraud of the rights of this respondent (to whom no recourse to any Court was then afforded by the terms of the statute, which then afforded such recourse only to persons resident in the various judicial districts of the United States) fraudulently pretended that he, said Palmer, had duly

investigated, and that he had personally examined and passed on the evidence obtained by investigation, when he had not done either; and fraudulently pretended by his said letter, Exhibit B of the petition, to have determined after examination and investigation (contrary to the evidence and information in his possession, and to the evidence immediately obtainable had he made real investigation, and contrary to the facts as they existed), that this respondent had no rights in such securities and monies, and that the same belonged exclusively to said Helene von Schierholz.

This respondent further alleges on information and belief, that any such pretended determination by the said A. Mitchell Palmer, as Alien Property Custodian, as recited in said Exhibit B, that said securities belonged to Helene von Schierholz and that said sums of money were owing to her, was unlawful, fraudulent, null and void, and did not constitute due process of law, and was an attempt to deprive this respondent of his property without due process of law, and to take his private property for public use without compensation or opportunity to be heard, contrary to the provisions of the Fourth and Fifth amendments to the Constitution of the United States; and was in excess of any powers that the Congress of the United States and the President of the United States could confer, on such Custodian or on any other administrative officer, even when legislating under the war powers of Congress, and also contrary to the provisions of the Act of Congress approved October 6, 1917, commonly known as the Trading with the Enemy Act, and the amend-

ments thereto theretofore adopted, and contrary to any authority conferred by the President of the United States on said Palmer as such Alien Property Custodian under said Act of October 6, 1917, and the amendments made thereto prior to the making of such pretended determination.

6.

Answering the allegations of paragraph VI of the said petition herein this respondent, on information and belief, denies that either the sum of $39,190.76 designated as "Checking Account" or the sum of $18,159.69 designated as a "Trust Account" or any part of either thereof was held by the respondent Trust Company subject to the demand of Helene J. von Schierholz, at any time or times after April 6, 1917, or under any other conditions or in any other way, at any time, than as hereinafter alleged. And this respondent, on information and belief, alleges that the right and power of said Helene J. von Schierholz at any time to demand delivery to her of any of said securities or monies was, from the making of such deposit, only a power in trust, as more fully hereinafter is set forth, which ceased and determined on the declaration of war by the United States against Germany on April 6, 1917, and that such power (save for the cash and securities individually belonging to her as hereinafter set forth) involved elements of personal trust and confidence and was not transferable.

This respondent admits, and on information and belief alleges, that Helene J. von Schierholz in the said petition named was, from and after the declaration of war by the United States on

Germany technically an enemy of the United States, and until the enactment of the Act of Congress of June 5, 1920, without a license to deal with said properties, or any thereof, save such license as was given by general proclamation in 1919. But this respondent alleges, on information and belief, that said Helene J. von Schierholz was born an American citizen on April 14th, 1856, in Paris, France, while her parents, who were then citizens of the United States, domiciled in Brooklyn, New York, were temporarily residing in Paris; that she is the daughter of the late Charles Ahrenfeldt of Kings County, New York, (who was by birth a subject of the King of Denmark, but was duly naturalized an American citizen on October 3rd, 1848, and who was domiciled and long resided in the City, as it then was, of Brooklyn, New York, and who retained his domicile there until his death on January 21st, 1893) and of Helene Ahrenfeldt, his wife, who was also an American citizen; that said Helene J. von Schierholz lost her American citizenship and became a German subject by her marriage on or about July 24th, 1879 (long prior to August 1st, 1914) to her husband Arthur von Schierholz, who was a German subject but died in January, 1899; that at the time of her said marriage said Helene J. von Schierholz was an American citizen; that such marriage occurred long prior to August 1, 1914, and that said Helene J. von Schierhoz has been since April 6, 1917, and is still domiciled in Germany and there a resident.

Save and except as hereinbefore specifically admitted this respondent has no knowledge or in-

formation sufficient to form a belief as to the truth of any allegation contained in paragraph numbered "VI" of the said petition and therefore denies the same and each and every thereof and demands that the petitioner make due proof thereof.

7.

This respondent is informed and believes that the respondent Commercial Trust Company of New Jersey has failed and refused and continues to fail and refuse to convey, transfer, assign, deliver or pay to the petitioner the money and other property described in the petition, but still holds the same subject to the demand of this respondent.

Save and except as in this paragraph specifically admitted this respondent on information and belief denies each and every allegation contained in paragraph numbered VII of the petition herein.

8.

This respondent answering paragraph numbered "VIII" of the petition herein admits that this proceeding is brought by the petitioner as Alien Property Custodian of the United States.

9.

This respondent further alleges, on information and belief, that this respondent was for many years prior to his death a trusted business associate and friend of the late Charles Ahrenfeldt,

of Brooklyn, New York; and that this respondent is well over sixty years of age; that upon the death of said Charles Ahrenfeldt, above named, in 1893, as above set forth, his three children by his said wife Helene Ahrenfeldt, namely, Charles J. Ahrenfeldt, Helene von Schierholz (nee Ahrenfeldt) named in the petition, and Lucy von Uxküll-Gyllenband née Ahrenfeldt) derived and received from their said father's estate, assets and securities of large value;

That said Charles J. Ahrenfeldt is, and by and since his birth has at all times been an American citizen; that said Charles J. Ahrenfeldt has at all times since August 1st, 1914, resided and been in either England, or in France or in Switzerland, and has never been an enemy of the United States.

This respondent further alleges on information and belief that said Lucy von Uxküll-Gyllenband was born a citizen of the United States on April 25th, 1861, while her said parents, Charles Ahrenfeldt and Helene Ahrenfeldt, his wife, were domiciled in Brooklyn, but temporarily residing in Paris, France, as above stated; that said Lucy von Uxküll-Gyllenband lost her original American citizenship and became a German subject about 1885 by her marriage to a German subject, one Hans von Wangenheim, from whom she thereafter obtained a valid decree of divorce in the German courts, prior to 1897. Thereafter and in 1897 she was again married to Count Woldemar von Uxküll-Gyllenband, also a German subject, and has ever since resided in Germany, and is now there resident in the city of Berlin;

and that, at the time of her said first marriage to said von Wangenheim, said Lucy von Uxküll-Gyllenband was an American citizen, and became a German subject by that marriage.

10.

This respondent further alleges, on information and belief, that prior to January 30th, 1913, said Charles J. Ahrenfeldt, said Helene von Schierholz and said Lucy von Uxküll-Gyllenband, reposing trust and confidence in this respondent, had respectively placed in his hands various sums of money and American securities belonging to them respectively in severalty, all derived as aforesaid by them severally from said Charles Ahrenfeldt, deceased, and all situate in this country, to be cared for by this respondent as the agent of them respectively, with power to this respondent to make investments and changes in investments thereof from time to time, with the approval of said Charles J. Ahrenfeldt, and with the understanding that this respondent might likewise, along with such funds, invest other funds of his own, but that while the ownership of such securities and funds should at all times be kept several, the cash at any time on deposit should be carried in the name of the respondent, though belonging to said several parties in their respective proportions.

11.

This respondent further alleges, on information and belief, that in January 1913, it was agreed

among the said four parties (viz.: this respondent, said Charles J. Ahrenfeldt, said Helene von Schierholz and Lucy von Uxküll-Gyllenband) that certain securities and some cash then so beld by this respondent, belonging to them in severalty as aforesaid, should be deposited by him in the abovenamed Commercial Trust Company of New Jersey, and that for convenience, in case of any supervening disability of this respondent, such cash and securities should be deposited in the joint names of this respondent and of said Helene von Schierholz, with power (as between themselves and said Trust Company) to either of them to withdraw the same; but with the definite understanding and agreement among all said four parties that said Helene von Schierholz should exercise such power only in case of disability of this respondent, and then only subject to the like responsibility as this respondent was at all times under, to return to any one of the respective owners, his or her securities and his or her part of the cash, upon demand, but leaving with this respondent power and authority in his own discretion at any time and from time to time to withdraw any and all securities or moneys deposited with said Trust Company.

12.

This respondent further alleges, on information and belief, that all securities and cash so entrusted to this respondent by said Helene J. von Schierholz and Lucy von Uxküll-Gyllenband respectively were property derived by them respectively from their said father Charles Ahrenfeldt, de-

ceased, or his estate, or securities into which property so derived by them had been changed by them respectively; and that none of said property so owned by them, or either of them, deposited in said Commercial Trust Company in the joint names of this respondent and said Helene J. von Schierholz, was acquired by either of them, either directly or indirectly from any citizen or subject of Germany or Austro-Hungary or of any country allied with either of those countries in the said war.

13.

This respondent further alleges, on information and belief, that pursuant to such arrangement between this respondent, said Charles J. Ahrenfeldt, said Helene J. von Schierholz and Lucy von Uxküll-Gyllenband, in January, 1913, and thereafter, this respondent and said Helene J. von Schierholz entered into an agreement with said Commercial Trust Company of New Jersey set forth in Schedule C of Exhibit 1 of the petition herein, and thereafter, to wit, in May 1913, by written agreement between them and said Commercial Trust Company said agreement was modified so as to provide that said Trust Company's commissions should be one per cent. on income alone, instead of two per cent. as originally provided.

14.

This respondent further alleges, on information and belief, that pursuant to such arrangement this

respondent thereupon on or about January 30th, 1913, deposited with said Commercial Trust Company of New Jersey, under said agreement with it, sundry American securities and cash belonging respectively to this respondent, to said Charles J. Ahrenfeldt, to said Helene J. von Schierholz and to said Lucy von Uxküll-Gyllenband, all previously held by this respondent, part as individual owner of certain thereof, and the remainder as such agent of said Charles, of said Helene and of said Lucy, respectively, as several owners of such individual sums and securities respectively.

That thereafter pursuant to such power to change investments so reposed in this respondent, and with the advice and approval of said Charles J. Ahrenfeldt, this respondent changed various investments so held for the said several parties in interest, and some bonds held for them respectively were paid off, and on December 19th, 1917 the cash and securities so deposited with said Commercial Trust Company of New Jersey, under said agreement with it as so modified as hereinbefore alleged, consisted of a balance of $4,700.08 cash due from said Trust Company and the securities set forth in Schedule E of Exhibit 1 of the petition of the Alien Property Custodian herein.

That such cash balance due on December 19th, 1917, from the said Trust Company and securities then so deposited with it, of which it was a mere bailee, were then owned in severalty as follows:

Proposed Answer of Frederick Wesche.

1. *By this respondent individually:*

Cash $1074.23
$10,000. bonds of Vancouver Lumber Co. Ltd.
2,000. " " Kings County Lighting Co.
3,000. " " Adirondack Electric Power Co.
5,000. " " Hudson Navigation Co.
15,000. " " Champion Lumber Co.
5,000. " " New Netherlands Theatre Co.
5,000. " " Duluth Street Railway Co.
24,000. " " Central Georgia Power Co.
6,000. " " Fonda, Johnstown & Gloversville R. R. Co.
9,800. United States bonds of the 2d Liberty Loan

2. *By said Charles J. Ahrenfeldt individually:*

Cash $303.73
$10,000. bonds of Vancouver Lumber Co. Ltd.
5,000. " " Hudson Navigation Co.
15,000. " " Champion Lumber Co.
5,000. " " New Netherlands Theatre Co.
5,000. " " Central Georgia Power Co.
5,000. " " Omaha Waterworks
8,000. United States bonds of the 2d Liberty Loan.

3. *By said Helene J. von Schierholz:*

Cash $1164.71
$ 5,000. bonds of Vancouver Lumber Co. Ltd.
7,000. " " Tacoma Eastern R. R. Co.
28,000. " " City of Chicago

5,000.	"	" Montreal Tramways Co.
5,000.	"	" Gulf & Ship Island Railway
5,000.	"	" Kings County Lighting Co.
5,000.	"	" City of Memphis bearing 4¼% interest
7,000.	"	" Adirondack Electric Power Co.
5,000.	"	" Norfolk Southern R. R. Co.
5,000.	"	" Champion Lumber Co.
10,000.	"	" Jersey City (Water)
2,000.	"	" Clearview Coal Co.
5,000.	"	" Duluth Street Railway Co.
5,000.	"	" Central Georgia Power Co.
5,000.	"	" Westchester Lighting Co.
42,000.	Stock of the City of New York	
16,500.	United States bonds of the 2d Liberty Loan.	

4. *By said Lucy von Uxküll-Gyllenband individually*:

Cash		$2157.41
$ 5,000.	bonds of Vancouver Lumber Co. Ltd.	
2,000.	"	" Tacoma Eastern R. R. Co.
5,000.	"	" Gulf & Ship Island R. R. Co.
3,000.	"	" Kings County Lighting Co.
11,000.	"	" City of Memphis bearing 4½% interest
5,000.	"	" Champion Lumber Co.
10,000.	"	" Jersey City (Water)
3,000.	"	" Clearview Coal Co.
6,000.	"	" Duluth Street Railway Co.
6,000.	"	" Central Georgia Power Co.
10,000.	"	" Los Angeles Water Works

5,000. " " Westchester Lighting Co.
83,000. stock of the City of New York.
5,000. bonds of Omaha Water Works
18,700. United States bonds of the 2d Liberty Loan

That all said securities had been owned in severalty by the said several individuals as above set forth from a time prior to March 1st, 1914, save and except that:

1. Each of the said lots of Liberty Bonds had been bought with cash on hand then on deposit in said "Checking" account with said Commercial Trust Company, belonging to the individual so acquiring such bonds, on the 6th day of October, 1917.

2. Said Helene J. von Schierholz had acquired $2,000 of her Kings County Lighting Co. bonds, $5,000 of her Adirondack Electric Power Company bonds and her $2,000 Clearview Coal Company bonds on or about March 7th, 1914, and prior to August 1st, 1914, by purchase from said Charles J. Ahrenfeldt for cash belonging to her.

3. Said Lucy von Uxküll-Gyllenband had acquired her $3000. Kings County Lighting Co. bonds, her $3000. Clearview Coal Company bonds and her $6000. Duluth Street Railway Co. bonds on or about March 6, 1914 and prior to August 1st, 1914 by purchase from said Charles J. Ahrenfeldt, for cash belonging to her.

16.

This respondent further alleges on information and belief that thereafter and on the 3d day of January, 1918, said Vancouver Lumber Company bonds aggregating $30,000. were paid off, and various coupons belonging to said securities were collected aggregating (net) $3104.89 and on December 28th, 1917, $11.42 interest accruing on the balances in the said account was credited on said account and on the 3rd day of January, 1918, the securities so held by this respondent individually and as such agent of the said several parties and deposited with the Commercial Trust Company of New Jersey under said agreement in the said account, and all derived from the said sources, consisted of the following items belonging to the several parties respectively as follows:

1. *Individual property of this respondent.*

Cash		$11,497.59
$2,000.	bonds of	Kings County Lighting Company
$3,000.	"	"Adirondack Electric Power Company
$5,000.	"	" Hudson Navigation Company
$15,000.	"	" Champion Lumber Company
$5,000.	"	" New Netherlands Theatre Company
$5,000.	"	" Duluth Street Railway Company
$24,000.	"	" Central Georgia Power Company

$6,000. " " Fonda, Johnstown & Gloversville R. R. Co.
$9,800. United States bonds of the Second Liberty Loan

2. *Individual property of Charles J. Ahrenfeldt.*

Cash $10,712.85
$5,000. bonds of Hudson Navigation Company
$15,000. " " Champion Leather Company
$5,000. " " New Netherlands Theatre Company
$5,000. " " Central Georgia Power Company
$5,000. " " Omaha Water Works
$8,000. United States bonds of the Second Liberty Loan

3. *Individual property of Helene J. von Schierholz*

Cash $7,690.90
$7,000 bonds of Tacoma Eastern R. R. Company
$28,000. " " the City of Chicago
$5,000. " " " Montreal Tramways
$5,000. " " " Gulf & Ship Island Railway
$5,000. " " " Kings County Lighting Company
$5,000. " " " City of Memphis, bearing 4¼% interest.
$7,000. " " " Adirondack Electric Power Co.

$5,000. " " " Norfolk Southern R. R. Co.
$5,000. " " " Champion Lumber Company
$10,000. " " Jersey City (Water Works)
$2,000. " " the Clearview Coal Company
$5,000. " " Duluth Street Railway
$5,000. " " Central Georgia Power Company
$5,000. " " Westchester Lighting Company
$42,000. stock of the City of New York
$16,500. United States bonds of the Second Liberty Loan

4. *Individual property of Lucy von Uxküll-Gyllenband*

Cash $7,915.05
$2,000. bonds of Tacoma Eastern R. R. Co.
$5,000. " " Gulf & Ship Island R. R. Co.
$3,000. " " Kings County Lighting Company
$5,000. " " Champion Lumber Company
$11,000. " " City of Memphis, bearing 4½% interest
$10,000. " " Jersey City (Water)
$3,000. " " the Clearview Coal Company
$6,000. " " the Duluth Street Railway Co.
$6,000. " " Central Georgia Power Company
$10,000. " " Los Angeles Water Works
$5,000. " " Westchester Lighting Company

$83,000. stock of the City of New York
$5,000. bonds of Omaha Water Works
$18,700. United States bonds of the Second Liberty Loan

17.

This respondent further alleges on information and belief that subsequently under the said authority conferred on this respondent and with the approval of said Charles J. Ahrenfeldt the Champion Lumber Company bonds above mentioned were exchanged on behalf of each of the said several owners thereof for a like amount of bonds of the Suncrest Lumber Company, which had taken over the business of said Champion Lumber Company.

18.

This respondent further alleges on information and belief that the various balances due from the Trust Company on the Checking Account were as far as its relations were concerned a debt due from said Trust Company; but as between this respondent, said Ahrenfeldt, said Helene von Schierholz and said Lucy von Uxküll-Gyllenband the sums deposited with said Trust Company constituted a fund in which they were severally and individually interested in the amounts herein shown. For convenience the sums deposited with the Trust Company are at times herein referred to as a fund. Said Trust Account has from its inception all been set aside and is held by said Com-

mercial Trust Company on deposit in another Trust Company as a separate fund.

19.

This respondent further alleges on information and belief that out of the cash on hand on January 3rd, 1918, above shown, which was all held in the Checking Account mentioned in the petition, there was paid out on March 26th, 1918, the sum of $42.60, of which $37.18 was this respondent's money, $2.21 money of the said Charles J. Ahrenfeldt, $1.60 money of the said Helene J. von Schierholz and $1.61 money of the said Lucy von Uxküll-Gyllenband.

That the only other changes in the said checking account from and after January 3rd, 1918, were additions of interest accrued on the balances in the account, which belonged severally to the individual owners of the funds on deposit in said account as earned thereby and such individual shares of interest earned, up to September 28th, 1920, were as follows:

To this respondent individually	$978.05
To Charles J. Ahrenfeldt individually	913.81
To Helene J. von Schierholz individually	656.01
To Lucy von Uxküll-Gyllenband individually	675.15
Total	$3223.02

20.

This respondent further alleges on information and belief that the total amount of cash in said

checking account on March 28th, 1919 was $39,190.76, which belonged:

To this respondent individually	$11,890.48
To Charles J. Ahrenfeldt individually	11,112.36
To Helene J. von Schierholz individually	7,977.67
To Lucy von Uxküll-Gyllenband individually	8,210.25
	$39,190.76

21.

This respondent further alleges on information and belief that additional interest was earned on the balances in said checking account and credited thereon after March 28th, 1919 and up to and including September 28th, 1920 aggregating $1806.05, bringing the balance to the credit of said checking account on that date up to $40,996.81, which entire sum belongs

To this respondent individually	$12,438.46
To Charles J. Ahrenfeldt individually	11,624.45
To Helene J. von Schierholz individually	8,345.31
To Lucy von Uxküll-Gyllenband individually	8,588.59
	$40,996.81

22.

This respondent further alleges on information and belief that since September 28th, 1920 said

balance in the so-called Checking Account has been and is now earning additional interest, which additional interest as earned belongs to this respondent, to said Charles J. Ahrenfeldt, to said Helene J. von Schierholz and to said Lucy von Uxküll-Gyllenband in proportion to their several interests therein on September 28th, 1920.

23.

This respondent further alleges on information and belief that the so-called Trust Account referred to in the petition, was created after January 3d, 1918, and consists exclusively of sums collected by said Commercial Trust Company since February 1st, 1918, as interest on the said several securities so deposited with it as above set forth, owned by the said several persons, and of the sums collected as principal of said $5000 Clearview Coal Company bonds on April 7th, 1920, and as principal of said $10,000 New Netherlands Theatre Company bonds on May 3d, 1920, and of interest accrued on the balances so placed to the credit of said account, less the commissions charged by said Trust Company under said agreements with it.

24.

This respondent further alleges on information and belief that all sums so deposited to the credit of said so-called Trust Account belonged individually to one or other of said four persons, to wit, this respondent, said Charles J. Ahrenfeldt, said

Helene J. von Schierholz and said Lucy von Uxküll-Gyllenband in severalty, in accordance with their respective ownership of the securities from which the said several sums so deposited were received.

25.

This respondent further alleges on information and belief that on March 28th, 1910 the sums credited to said Trust Account, above all commissions charged thereon amounted to the aggregate sum of $18,159.69, which sum belonged to the said four persons respectively in severalty as follows:

To this respondent individually:

Coupons and interest from his said securities	$3093.01
Interest accrued on such deposit thereof	37.29
	$3130.30

To said Charles J. Ahrenfeldt individually:

Coupons and interest from his said securities	$1539.46
Interest accrued on such deposit thereof	17.88
	$1557.34

To said Helene von Schierholz individually:

Coupons and interest from her said securities	$6566.81
Interest accrued on such deposit thereof	67.62
	$6634.43

To said Lucy von Uxküll-Gyllenband individually:

Coupons and interest from her said securities	$6760.56
Interest accrued on such deposit thereof	77.06
	$6837.62

26.

This respondent further alleges on information and belief that on October 1st, 1920 the sums credited to said Trust Account above all commissions so charged thereon amounted to the aggregate sum of $61,583.83, which sum belonged to the said four persons respectively in severalty, as follows:

To this respondent individually	$12,924.99
To Charles J. Ahrenfeldt individually	8,862.16
To Helene J. von Schierholz individually	19,063.99
To Lucy von Uxküll-Gyllenband individually	20,732.69
Total	$61,583.83

and that by a bookkeeper's error said Commercial Trust Company made an overcharge of $1.00 commission on October 1st, 1920 on credits amounting to $907.15, charging $10.07 commissions instead of but $9.07, and the balance disclosed by it as of October, 1920 in its answer is $1.00 less than the actual balance.

27.

This respondent further alleges on information and belief that of the net sums so credited to said Trust Account (deducting its said erroneous charge of $1.) the following were the sources, all being derived from the above-mentioned securities:

1. *Sums belonging to this respondent individually.*

Principal of $5000. New Netherlands Theatre bonds paid off belonging individually to this respondent	$5000.00
Amounts of interest or coupons collected on the individual securities above described belonging to this defendant individually, so deposited with said Commercial Trust Company of New Jersey (less commissions of 1%)	7526.77
Amounts of interest credited growing out of the above amounts credited to said Trust account belonging to this respondent individually (less commissions of 1%)	398.22
	$12,924.99

2. *Sums belonging to Charles J. Ahrenfeldt individually.*

Principal of $5000. New Netherlands Theatre bonds paid off belonging individually to said Charles J. Ahrenfeldt	$5,000.00
Amounts of interest or coupons collected on the individual securities above described belonging to said Charles J. Ahrenfeldt individually, so deposited with said Commercial Trust Company of New Jersey (less commissions of 1%)	3,639.53
Amounts of interest credited growing out of the above amounts credited to said Trust account belonging to said Charles J. Ahrenfeldt individually (less commissions of 1%)	222.63
	$8,862.16

3. *Sums belonging to Helene J. von Schierholz individually.*

Principal of $2000. Clearview Coal Company bonds paid off belonging individually to said Helene J. von Schierholz	$2.000.00
Amounts of interest or coupons collected on the individual securities above described belonging to	

said Helene J. von Schierholz individually, so deposited with said Commercial Trust Company of New Jersey (less commissions of 1%)	16,338.35
Amounts of interest credited, growing out of the above amounts credited to said account belonging to said Helene J. von Schierholz individually (less 1% commissions)	725.64
	$19,063.99

4. *Sums belonging to Lucy von Uxküll-Gyllenband individually.*

Principal of $3000. Clearview Coal Company bonds paid off belonging individually to said Lucy von Uxküll-Gyllenband on Trust Company in January 1918	$3,000.00
Amounts of interest or coupons collected on the individual securities above described belonging to said Lucy von Uxküll-Gyllenband, individually, so deposited with said Commercial Trust Company of New Jersey, less commissions of 1%)	16,946.86

Amounts of interest credited to such Trust Account accruing on the above amounts credited to said accounts belonging to said Lucy von Uxküll-Gyllenband individually (less commissions of 1%)	785.53
	$20,732.69

28.

This respondent further alleges on information and belief that in addition to said sums additional coupons are from time to time collected belonging to said four several individuals, cut from their said securities, which belong to them respectively in severalty, and additional interest is being earned on their several balances deposited in said account, all of which belong to them severally.

29.

This respondent further alleges on information and belief that the securities still in the hands of said Commercial Trust Company of New Jersey so deposited with it now consist of the following securities owned severally by the following individuals respectively:

1. *Securities owned by this respondent individually.*

$2.000. bonds of Kings County Lighting Company

3,000. " " Adirondack Electric Power Company

5,000. " " Hudson Navigation Company
15,000. " " Suncrest Lumber Company
5,000. " " Duluth Street Railway
24,000. " " Central Georgia Power Company
6,000. " " Fonda, Johnstown & Gloversville R. R. Co.
9,800. United States bonds (2d Liberty Loan)

2. *Securities owned by said Charles J. Ahrenfeldt individually.*

$5,000. bonds of Hudson Navigation Company
15,000. " " Suncrest Lumber Company
5,000. " " Central Georgia Power Company
5,000. " " Omaha (Water Works)
8,000. United States bonds (2d Liberty Loan)

3. *Securities owned by said Helene J. von Schierholz individually.*

$7,000. bonds of Tacoma Eastern R. R. Co.
28,000. " " City of Chicago (City Hall 4s)
5,000. " " Montreal Tramways
5,000. " " Gulf & Ship Island Ry. Co.
5,000. " " Kings County Lighting Co.
5,000. " " the City of Memphis (4¼%)
7,000. " " " Adirondack Electric Power Company

$5,000. " " " Norfolk Southern R. R. Co.
5,000. " " " Suncrest Lumber Company
10,000. " " Jersey City, Water Works
5,000. " " the Duluth Street Railway
5,000. " " " Georgia Central Power Co.
5,000. " " " Westchester Lighting Company
42,000. stock of the City of New York.
16,500. United States bonds (2d Liberty Loan)

4. *Securities owned by said Lucy von Uxküll-Gyllenband individually.*

$2,000. bonds of Tacoma Eastern R. R. Co.
5,000. " " Gulf & Ship Island Ry.
3,000. " " Kings County Lighting Co.
11,000. " " the City of Memphis (4½%)
5,000. " " Suncrest Lumber Company
10,000. " " Jersey City—Water Works
6,000. " " Duluth Street Railway
6,000. " " Central Georgia Power Co.
10,000. " " City of Los Angeles (Water Works)
5,000. " " Westchester Lighting Company
83,000. stock of the City of New York
5,000. bonds of Omaha (Water Works)
18,700. United States bonds (2d Liberty Loan)

That such securities so owned are in each instance accompanied by all coupons thereto belonging maturing since October 1st, 1920 (save as any such coupons have been collected since October 1st, 1920 and thereafter credited to said Trust Account) and the coupons and any proceeds so collected and any interest accruing thereon are the several property of said several owners of the securities to which they pertain. All the said several securities herein mentioned other than the said United States bonds are securities issued by various American private or municipal corporations.

30.

This respondent further alleges on information and belief that the above-named securities and the above described indebtedness and sums of cash so set apart, all of which are so claimed by this respondent, are the identical securities, indebtedness and particular funds of cash which the Alien Property Custodian, as petitioner herein, is asking to have directed turned over to him by order and decree of this Court upon his petition herein.

31.

This respondent further alleges on information and belief that he was at all times and still is the agent of said Charles J. Ahrenfeldt, of said Helene J. von Schierholz and of said Lucy von Uxküll-Gyllenband, in charge of their said respective securities and moneys, and holder of his own, and

this relation was not changed by the arrangement for deposit of said securities and cash in the joint names of this respondent and said Helene J. von Schierholz any further than this: that she should be able to act as an alternate for this respondent in withdrawing such securities and cash in event of the death or other disability of this respondent; that it was a term of the arrangement between the said four principals for such deposit in the joint names of this respondent and said Helene J. von Schierholz with the Commercial Trust Company of New Jersey, that she should act only as such alternate in such event, and she was given such power only upon that trust; that said Helene J. von Schierholz has at all times observed said trust and has not at any time from the inception of such deposit in January 1913, interfered in any way with the conduct of such agency by this respondent, who has at all times been the sole person actually in charge of such securities and funds.

This respondent further alleges on information and belief that the attempt of the Alien Property Custodian to seize such funds, under the power conferred upon said Helene J. von Schierholz by the making of the deposit in the joint names of this respondent and herself, is contrary to the terms of the arrangement and the trust under which she was so made a co-depositor, and under which such deposits with the Trust Company were made by this respondent, that she should act only as such alternate, and only in the event of the death or disability of this respondent, and in breach of the trust duties and relations imposed

on her by such arrangement, to all of which the Custodian would, if he could have taken over her said power, have *ipso facto* been subject; that this respondent has not at any time been under any disability to act, and neither the time nor the occasion when said Helene J. von Schierholz would be justified in withdrawing any of said cash or securities by virtue of the deposit in the joint names of this respondent and herself has ever arisen; and that the attempt of the Custodian to obtain such funds and securities by virtue of her being so named as joint depositor and the provisions of the agreement with said Commercial Trust Company, if he had the power to exercise the power held by said Helene von Schierholz, was a breach of the trust duties assumed by her, (upon the assumption of which alone she was named as such joint depositor on the terms stated in such contracts with the said Commercial Trust Company), and in fraud of the rights of this respondent.

33.

This respondent further alleges on information and belief that all the foregoing facts would have been promptly and fully disclosed to the said A. Mitchell Palmer or the petitioner, his successor, as Alien Property Custodian or their representatives had they or any of them, either in 1918 or at any other time made due inquiry or investigation into the rights to the said funds and securities so deposited with the Commercial Trust Company, and the sums on deposit with it, or the

ownership and tenure thereof; that none of them made any investigation whatever into the ownership or tenure or conditions thereof beyond seeking and obtaining such report from said Commercial Trust Company.

34.

This respondent further alleges on information and belief that since the said pretended determination by the former Alien Property Custodian recited in said Exhibit B of the petition as made in 1918, and which, if made at all, was made without any investigation of the facts relative to the ownership, tenure and conditions of said securities, debts and funds, the Act of Congress of June 5, 1920, amending the Trading with the Enemy Act has been enacted. And this respondent contends that by virtue thereof and the original American citizenship of said Helene J. von Schierholz and Lucy von Uxküll-Gyllenband (lost only by their respective marriages to German subjects long prior to 1914), the Alien Property Custodian has lost all right to claim or take over the portions of said funds and securities belonging to them severally.

35.

This respondent further alleges that long prior to the commencement of this proceeding, and after the enactment of the Act of Congress of June 5, 1920, to wit, on the 8th day of July, 1920, this respondent demanded of the said Commercial Trust Company payment to him of all the said

balances in the said Checking Account and said Trust Account, so agreed to be paid to him on his demand, and all said securities so deposited with it. That said demand was made in good faith and without any collusion with said respondent Trust Company. That in making such demand this respondent acted as owner of his own part and as such trust agent for his said several principals Charles J. Ahrenfeldt, Helene J. von Schierholz and Lucy von Uxküll-Gyllenband, charged by them respectively with the duty of holding their respective securities and cash.

36.

This respondent further alleges on information and belief, that said Commercial Trust Company of New Jersey holds all said funds and securities and owes the moneys hereinbefore set forth as bailee, depositary and debtor of this respondent; that its possession thereof is his possession; and that this respondent is entitled to intervene and be heard in this proceeding *pro interesse suo* both as such bailor and creditor, and also as the individual several owner of the cash and securities hereinbefore specified and also as agent in possession of the securities and cash belonging severally to his said several principals Charles J. Ahrenfeldt, Helene J. von Schierholz and Lucy von Uxküll-Gyllenband; and that any order or decree of this Court directing any disposition of such funds or securities without first giving this respondent his day in Court, will be contrary to law and to the provisions of the fourth and fifth amendments to the Constitution of the United States.

37.

This respondent further alleges on information and belief that no investigation and no determination after investigation of the ownership or holding of the securities and moneys in the hands of the Commercial Trust Company of New Jersey hereinbefore described, such as was contemplated by the provisions of the Trading with the Enemy Act has ever been made by either the former Alien Property Custodian or the present Alien Property Custodian or any representative of either, and that the present proceeding is an attempt simply to ignore the rights and interests of this respondent, to take the private property of this respondent for public use, without just compensation, and to deprive him of his property without due process of law and in violation of the right of this respondent to be secure in his effects against unreasonable seizure, guaranteed by the fourth article of Amendment to the Constitution of the United States, and also without warrant issued upon proper cause supported by oath or affirmation and particularly describing the things to be seized. And this respondent calls particular attention to the fact that the Alien Property Custodian in his petition herein, while sedulously alleging that the said A. Mitchell Palmer did investigate and after investigation determine that said Helene J. von Schierholz was in 1918 an enemy of the United States, has wholly and apparently sedulously avoided alleging that either said Palmer as such Alien Property Custodian or said petitioner, his successor, has ever investigated or determined

after investigation that the indebtedness of the Trust Company and the property mentioned in Exhibit A of said Custodian's petition, was by the Trust Company owing to or belonged to or by it held for, by, on account of, or for the benefit of said Helene von Schierholz.

38.

This respondent further alleges on information and belief that Ernest T. Greiner, named in the answer of said Commercial Trust Company to the petition herein, was at one time an employee of this respondent; that he is not now and has not been for more than eight months last past; that said Greiner has neither lien nor color of lien on any of the said funds or securities so in the hands of said Commercial Trust Company, and this respondent prays that if said Greiner be allowed to intervene or answer herein this respondent be permitted to answer any claims he may make or matters that he may assert.

WHEREFORE, this respondent prays that an examination *pro interesse suo* into his rights and interests in the property and indebtedness petitioned for by the Custodian be had and the rights and interests of this respondent therein be determined; that the prayer of the petition be denied; that the said Commercial Trust Company of New Jersey be ordered and directed to deliver to this respondent all the securities and funds so held by it, and particularly those specifically shown to be the individual several property of this respondent,

and also to him as agent, those above shown to be the individual and several property of this respondent's said several principals, Charles J. Ahrenfeldt, Helene J. von Schierholz and Lucy von Uxküll-Gyllenband, and that this respondent have such other and further relief in the premises as may be just.

FREDERICK WESCHE,
Respondent,
by SELDEN BACON,
his attorney in fact.

SELDEN BACON,
Solicitor for Respondent Wesche
and Counsel,
Office and Post-office Address,
No. 43 Exchange Place,
Borough of Manhattan,
New York City.

Office in the District of New Jersey
at which papers can be served.
FISK & FISK, Esqs.,
15 Exchange Place,
Jersey City, New Jersey.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.:

SELDEN BACON, being first duly sworn, deposes and says that he resides at No. 50 Vanderbilt Avenue in the Borough of Manhattan in the City and State of New York and has his office at No. 43 Ex-

change Place, in said Borough of Manhattan; that he is a member of the Bar of this Court and is the solicitor and counsel for the above named Frederick Wesche and is his agent in this country, holding broad power of attorney from said Wesche, including power to act for him in this proceeding. Deponent further says that the reason that the foregoing answer is not verified by the said Wesche in person is because he is absent from the United States and in Switzerland, where he resides.

Deponent further says that he has read the foregoing answer and knows the contents thereof; that the matters therein stated are true to the best of his knowledge, information and belief; that the matters alleged are true of his own knowledge, save and except those matters therein stated to be alleged on information and belief, and that as to those matters they are in accordance with deponent's information and he believes them to be true.

Deponent further says that the sources of his information and grounds for his belief are correspondence with the said Frederick Wesche and with Charles J. Ahrenfeldt named in the said answer; personal conversations with said Frederick Wesche and said Charles J. Ahrenfeldt; correspondence and personal conversations with R. Newton Crane, Esq., a barrister of the Middle Temple of London, England, English Counsel for said Charles J. Ahrenfeldt and Frederick Wesche, and copies of the accounts kept by said Wesche of the funds and securities kept here by him, and copies of the accounts kept by the Commercial Trust Company of New Jersey, both of said Checking Account and said Trust Fund, furnished de-

ponent by said Commercial Trust Company, and statements made to this deponent by the officers of said Commercial Trust Company of New Jersey and its Counsel, Mr. Anderson, also the petition of the Alien Property Custodian herein.

SELDEN BACON.

Subscribed and sworn to before me this 26th day of January, 1921.

O. V. W. HAWKINS,
Notary Public, Nassau Co., New York.
Certificate filed in N. Y. Co. No. 4.
N. Y. Co. Register's No. 2002.
(Notarial Seal)

(Endorsed)
Filed Oct. 22, 1921.
at 9 o'clock A. M.

GEORGE T. CRANMER,
Clerk.

Statement of the Evidence and Proceedings at the Hearing.

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

THOMAS W. MILLER, as Alien Property Custodian,
Petitioner,

against

COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation,
Respondent.

In Equity.

In the Matter of the Application of Thomas W. Miller, as Alien Property Custodian, in re: certain stocks, bonds, securities and money alleged to be held by this respondent as the money and property of Helene J. von Schierholz, of Thurigen, Germany, an enemy.

STATEMENT OF ALL EVIDENCE AND PROCEEDINGS AT THE HEARING OF THE CAUSE.

The above entitled matter came on to be heard at a Stated Term of this Court held, Hon John Rellstab, District Judge presiding, without a jury, on the 21st day of February, 1921, regularly in its order upon the calendar, upon the petition of

the Alien Property Custodian filed September 11th, 1920, and the rule to show cause thereto annexed and the amended answer to said petition of the Commercial Trust Company, filed and served by leave of Court first had and obtained.

Elmer H. Geran, Esq. and D. H. Stanley, Esq. (of Counsel) appearing for the petitioner the Alien Property Custodian.

Fisk and Fisk, and Selden Bacon and J. Fisher Anderson, Esqs. (of Counsel), appearing for the respondent the Commercial Trust Company of New Jersey.

And thereupon the following proceedings were had:

Frederick Wesche, by Selden Bacon, Esq., his solicitor and counsel, presented his petition for leave to intervene and his proposed answer to the petition of the Alien Property Custodian, and moved for leave to intervene in the proceeding and file his proposed answer.

Charles J. Ahrenfeldt, by Selden Bacon, Esq., his solicitor and counsel, presented his petition for leave to intervene and his proposed answer to the petition of the Alien Property Custodian, and moved for leave to intervene in the proceeding and file his proposed answer.

Counsel for the Alien Property Custodian opposed each of such motions and the Court took the same under advisement.

The Alien Property Custodian, petitioner, thereupon introduced in evidence and submitted to the Court the original certificate made by the respondent of date the 19th day of December, 1917, of

which a true and correct copy is annexed to the original petition herein, and also a letter from the respondent (by its Secretary and Treasurer) to the Alien Property Custodian of date the 4th day of June, 1918, which letter it was conceded by both parties was sent to the then Alien Property Custodian on behalf of the respondent at the time it bears date, and received by said Custodian in due course of mail, which letter read as follows:

"Jersey City, N. J. June 4th, 1918

"Alien Property Custodian,
Washington, D. C.

Dear Sir:

"We acknowledge receipt of your letter of May 10th, 1918, in the matter of Helene J. von Schierholz, enclosing original and duplicate of demand upon us for securities and money reported to your Department.

"We regret that upon the advice of counsel, we are unable to acknowledge service of this demand or to surrender to you the securities or moneys constituting the fund reported. Our reason for refusing to acknowledge your jurisdiction over this fund is that the securities and money constituting the fund are held under an agreement dated June 30th, 1913, for the account of Frederick Wesche, of Paris, France, and Helene J. von Schierholz, of Plaue, Thuringen, Germany, under which agreement certain securities were deposited to be held for the joint account of the said Frederick Wesche and Helene J. von Schier-

holz, the interest to become due and payable on said securities to be collected for the joint account of Wesche and von Schierholz and the securities to be delivered when requested to Wesche and von Schierholz or to the survivor.

"Under this deposit agreement Frederick Wesche is entitled, if he makes demand for the same, to the securities and income constituting the trust fund. So far as we know Frederick Wesche is a resident of Paris, France, and not an alien enemy or ally of enemy.

"We have been advised that under these circumstances we would not be legally justified in surrendering these securities and money to you, pursuant to your demand, and that if we did so, we would be subject to action for damages by Wesche for delivering his property.

"We are desirous at all times of doing everything to assist the Government in the segregation of the property of alien enemies, and it is only because of the terms of the agreement under which these securities are held that we refuse to deliver the same.

"We think that if you do not concur in the correctness of our position in this matter you should institute action to test the correctness of the same.

"Report was made of the trust fund above mentioned, even though Wesche is not an alien enemy so far as we know, simply because of the fact that we know Helene J. von

Schierholz to be an alien enemy, and for the purpose of protecting our Company against liability for not making such report.

"Enclosed find a copy of the agreement under which we hold the securities and money which you desire us to deliver.

"Yours very truly,

"J. S. PERKINS,
"Sec'y & Treas."

Aside from the submission of said two papers the petitioner introduced no further evidence and rested; and the following colloquy thereupon occurred between the Court and counsel for the respective parties:

"Mr. Bacon: If there is any question about the facts that are set up in the return we want to take testimony and prove it. I don't understand whether counsel takes issue with the statements there made.

The Court: You want to look over that carefully because if I cannot treat this as a pure legal issue you will have to take your testimony.

Mr. Stanley: As far as we are concerned it is to be treated as a pure legal issue.

Mr. Bacon: That is you demur to the answer.

Mr. Stanley: We demur to the answer. You say there was not an investigation; we say there was. I have introduced the trust agree-

ment and the report and the letter of the Commercial Trust Company, and I want to say—

The Court: You know what they have introduced here.

Mr. Bacon: Yes, sir; I don't dispute the existence of those papers. Do you dispute our allegation there was no inquiry made of Mr. Wesche?

Mr. Stanley: I do of Mr. Wesche—oh, as far as Wesche is concerned that has nothing to do with our contention.

The Court: What he wants to know is whether you dispute it.

Mr. Stanley: We don't dispute—

The Court: You say as a matter of law.

Mr. Stanley: He has no bearing on it whatsoever. We will admit Mr. Wesche was not an enemy. We never said he was otherwise.

Mr. Bacon: Practically then except for the proposition as far as you have shown you don't claim there was any further investigation.

Mr. Stanley: No.

The Court: Is this to be transcribed?

Mr. Bacon: I think so.

Mr. Bacon: May I have this settled. As I understand it, the Government does not claim that there was any investigation or determination beyond what is shown by the papers.

Mr. Stanley: Beyond what is shown by the papers and this letter.

The Court: That is in here, isn't it?

Mr. Stanley: Yes.

Mr. Bacon: Now, and that except for that, and we don't dispute that that amount was done, and except for that you simply demur to the answer, to the return.

The Court: Do you want a demurrer or do you move to strike out?

Mr. Stanley: Move to strike out.

The Court: You contend, don't you, he has not raised anything at all in the answer?

Mr. Stanley: He says there was no investigation as to anybody. We say there was an investigation as to Von Schierholz. We don't care anything about Wesche. We never made any investigation as to Wesche and never questioned the fact he was not an enemy. I don't see where it comes in in our case at all.

The Court: The only thing is you come in here with a petition and ask for a rule upon them to show cause why this property should not be turned over. If there is anything you think is in issue as a fact you are presumed now to have joined issue on that, and the only thing you have done is to support your contentions as to that issue by the introduction of these two or three documents.

Mr. Stanley: Yes.

The Court: As to the rest you say it is not in issue, so they are presenting an issue which is not in the larger issue.

Mr. Stanley: That is exactly our situation.

The Court: You don't combat or want to combat what they have put in evidence.

Mr. Bacon: I don't dispute the facts.

The Court: That the legal effect of that does not mean anything?

Mr. Bacon: Yes, sir. That does not meet our denials but if there is any question of fact beyond that we claim the right to present evidence.

The Court: You must determine whether you want to put in anything.

Mr. Bacon: He has not taken issue with us on the other matters. Unless it is specifically admitted here there was no further investigation, nothing further than what is shown there—

The Court: I don't want to control counsel.

Upon filing of these amended answers, the two answers standing, everything that you have not contraverted by the introduction of these documents you admit to be facts but you contend upon these facts there is no legal answer to your claim.

Mr. Stanley: That is it.

The Court: So that everything you put in your answer except what may be controverted by these documents is admitted as facts in the case.

Mr. Bacon: All right, sir.

The Court: That is where you stand.

Mr. Stanley: Yes, sir."

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The Commercial Trust Company thereupon rested; and after argument the matter was submitted on such motions and such papers and facts.

The Court thereupon fixed a day for the filing of briefs by the petitioner and respondent, which were duly submitted, to wit, on the 15th day of March, 1921.

Thereafter, and on the 22nd day of October, 1921, the Court filed its opinion on the applications for leave to intervene, and its opinion on the application of the Alien Property Custodian under his said Rule to Show Cause.

Thereafter, at a Stated Term of the Court, on the 16th day of January, 1922, Hon. John Rellstab presiding without a jury, the matter came on for further hearing on suggestion of the succession in office of Thomas W. Miller to the original petitioner Francis P. Garvan as Alien Property Custodian, and upon application of the said Miller for final decrees, on said several applications, of the Custodian and of the petitioners for intervention.

Frederick M. P. Pearse, Esq., appearing for the Custodian.

Selden Bacon, Esq., appearing as counsel for the Commercial Trust Company, and as solicitor and counsel for Messrs. Wesche and Ahrenfeldt.

Over the objection of the respondent and of the petitioners for intervention that by reason of the termination of the war the jurisdiction of the Court in this proceeding had terminated, the suggestion of the succession of Mr. Miller not being

controverted, order was entered substituting said Thomas W. Miller as Alien Property Custodian in place and stead of Francis P. Garvan as Alien Property Custodian.

It was then urged by Counsel for the Commercial Trust Company and for the petitioners for intervention that the adoption of the joint Peace Resolution of July 2nd, 1921, by both Houses of Congress and its signature by the President and filing with the Secretary of State, and the making and ratification of the treaty with Germany of August 25th, 1921 and exchange of ratifications thereof had and the passage of the Act of Congress of February 27th, 1921, altered the situation since the original hearing and since the filing of the Court's opinions, and that the Custodian was no longer entitled to the relief sought by him, whatever his previous rights had been.

The Court overruled all objections. It then signed the order denying the motion of the Alien Property Custodian to strike out the amended answer of the Commercial Trust Company, and thereupon entered its several orders and decrees, as follows:

On January 16th, 1922, its order and decree denying the petition of said Wesche for leave to intervene, and its order and decree denying the petition of said Ahrenfeldt for leave to intervene, as more fully thereby appears;

On January 19th, 1922, its final decree granting the petition of the Alien Property Custodian for relief as prayed for by the Alien Property

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Custodian against said Commercial Trust Company (except as to changes in securities and amounts of money in the possession of said Trust Company as shown by its said amended answer), as more fully appears by said decree.

The foregoing is hereby settled by me as a full statement of all the evidence introduced and proceedings had at the hearing of this case.

JOHN RELLSTAB,
District Judge.

(Endorsed) Filed Jan. 27, 1922 at 9 o'clock A. M. George T. Cranmer, Clerk.
Service acknowledged Jan. 25, 1922.

ELMER H. GERAN,
U. S. Atty.

Opinion of Rellstab, J., on Petitions to Intervene.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

FRANCIS P. GARVAN, as Alien Property Custodian, Petitioner, v. COMMERCIAL TRUST COMPANY OF NEW JERSEY, Respondent.	In Equity. On petition of Frederick Wesche and Charles J. Ahrenfeldt for leave to intervene. Denied.

SELDEN BACON, for Frederick Wesche and Charles J. Ahrenfeldt.

ELMER H. GERAN (United States Attorney), LUCIEN H. BOGGS and DEAN HILL STANLEY (Special Assistants to the Attorney General), for Respondent.

MEMORANDUM

RELLSTAB, District Judge:

At the time of the hearing of the rule to show cause granted in the above-entitled suit, Charles J. Ahrenfeldt and Frederick Wesche, the latter named with Helene J. von Schierholz in the trust agreement involved in such proceeding, presented their petitions for leave to intervene in said cause, praiyng on examination *pro interesse suo* to ascertain the interests and rights of each of them in

the property covered by said agreement. Ahrenfeldt alleged that he was a separate and individual owner of a large part of said property. Wesche alleged that he was bailor and principal of the Commercial Trust Company, defendant herein; a separate beneficial owner of a large part of the securities and moneys held by said Trust Company under said agreement; and agent charged with the custody of said properties of his several principals, the said Charles J. Ahrenfeldt and Helene J. von Schierholz, and also of one Lucy von Uxküll-Gyllenband. In the decision of the main case (opinion filed this day) it is held that under said trust agreement either Mrs. von Schierholz or Wesche could demand the possession of the properties therein covered and that inasmuch as Mrs. von Schierholz was an enemy within the meaning and purpose of the Trading with the Enemy Act, it was the duty of the Trust Company to comply with the demands of the Alien Property Custodian and turn over such property to him, and that the question of other persons' ownership or interest in said properties was irrelevant in such possessory proceedings.

The questions sought to be litigated by Wesche and Ahrenfeldt can be raised only after the demands of the Alien Property Custodian have been complied with, and by instituting the proceedings authorized by section 9 of the Act, as amended June 5, 1920. Their petitions to intervene in the present proceedings are denied.

(Endorsed) Filed Oct. 22, 1921, at 9 o'clock A. M. George T. Cranmer, Clerk.

Opinion of Rellstab, J., on Final Hearing.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

FRANCIS P. GARVAN, as Alien Property Custodian, Petitioner, v. COMMERCIAL TRUST COMPANY OF NEW JERSEY, Respondent.	In Equity. On petition, etc. On rule to show cause why certain moneys and securities should not be turned over to the Alien Property Custodian. Rule made absolute.

ELMER H. GERAN (United States Attorney), LUCIEN H. BOGGS and DEAN HILL STANLEY (Special Assistants to the Attorney General), for Petitioner.

FISK & FISK (SELDEN BACON and J. FISHER ANDERSON of counsel), for Respondent.

OPINION

RELLSTAB, District Judge

This is a suit to enforce demands made by the Alien Property Custodian under the Trading with the Enemy Act (Oct. 6, 1917, 40 Stat. 411), for delivery to him of certain securities and moneys

held by the Commercial Trust Company of New Jersey as trustee and for the joint account of Helene J. von Schierholz and Frederick Wesche, the former having been determined to be an enemy not holding a license from the President.

In the Custodian's petition it is alleged, inter alia, that: on or about December 19, 1917, the Trust Company, acting in compliance with the terms of the Trading with the Enemy Act and the Executive Orders issued thereunder, reported in writing to the Custodian's predecessor in office that it held in trust certain specified securities and cash for the joint account of Frederick Wesche of France and Helene J. von Schierholz of Germany, under a certain agreement, which reads:

> "RECEIVED, Jersey City, January 30, 1913, for the account of Frederick Wesche, of Paris, France, and Helene J. v. Schierholz, of Plaue, Thuringen, Germany, the bonds particularly set out in the schedule or list hereto annexed, and having a par value of five hundred and twenty-four thousand dollars ($524,000) to be held for the joint account of the said Frederick Wesche and Helene J. v. Schierholz, and to collect the interest to become due and payable on said bonds for the joint account of the said Frederick Wesche and Helene J. v. Schierholz and to deliver over said bonds from time to time as requested, to the said Frederick Wesche, or to the said Helene J. v. Schierholz, or to the survivor of them, it being understood that the said bonds and the said interest money to be collected thereon are to

be held and collected and delivered or paid over to either the said Fredrick Wesche or to the said Helene J. v. Schierholz, or to the survivor of them. Upon all interest moneys collected on said bonds there is to be retained by the undersigned for its services in the premises 2% of the amount so collected; this receipt is executed in triplicate.

COMMERCIAL TRUST COMPANY OF NEW JERSEY.

By J. W. Hardenbergh, President.

Attest:

(Seal) Wm. J. Field, Secretary.

"The deposit of the bonds with the Commercial Trust Company of New Jersey and the terms upon which said Trust Company is to hold and deliver over the said bonds and to collect and pay over the interest thereon as set forth in the above receipt is hereby ratified and confirmed.

Dated February 1913.

FR. WESCHE,

HELENE J. V. SCHIERHOLZ";

that on or about June 19, 1918, petitioner's predecessor in office, acting under the authority of said Act and Executive Orders, after investigation, determined that said Mrs. von Schierholz was an enemy within the meaning of said Act, and thereafter demanded the Trust Company to deliver to him all said securities and cash so held in trust; that on or about March 28, 1919, the Trust Company reported to the petitioner that it held, for

the benefit of Wesche and Schierholz, additional sums of money designated respectively as "checking account" and "trust account"; that on or about the last named date the petitioner, acting under said Act and Executive Orders, further demanded the Trust Company to deliver to him the said cash moneys and certain securities therein described.

In these demands (copies of which were annexed to the petition and made a part thereof), it is recited that they are made pursuant to the authority vested in the Alien Property Custodian by the Trading with the Enemy Act and the amendments thereto and the proclamations and executive orders issued thereunder, and that after investigation the Custodian determined that the said Mrs. von Schierholz was an enemy within the purview and meaning of the said Act, not holding a license granted by the President. The later of the two demands, dated March 28, 1919, declared that the therein described securities and income accrued and collected thereon were by the Trust Company "owing and held for, on account of, on behalf of and for the benefit" of the said Mrs. von Schierholz, and that the Custodian seized the same and required that the securities be conveyed to him, and that the cash therein specified be delivered to him, both securities and cash to be held by him as such Custodian, to be administered and accounted for by him as provided by law.

The petitioner further alleged that by virtue of said determinations and demands made by petitioner and his predecessor in office, petitioner, as Custodian, was vested with all the beneficial in-

terest in said moneys and other properties, and that by virtue of said Act and Executive Orders and the facts alleged in the petition, he was the only person entitled to the said moneys and property, but that the Trust Company refused, and continues to refuse, to recognize his authority as Custodian, and refuses to deliver said money or property to him.

On the filing of such petition a rule was issued, requiring the Trust Company to turn over such moneys and properties to the petitioner, or show cause why an order should not be made requiring it to do so. On the hearing of this rule the Trust Company appeared and filed its answer, setting up a number of grounds for refusing to obey such demands. These may be grouped under two heads: First, that the Alien Property Custodian has not shown that he has complied with the provisions of the Trading with the Enemy Act, so as to entitle him to the possession of these properties; and second, that having appealed to a court of equity to enforce his demands, that court will determine the question of title or interest in such properties, and award possession to the Custodian only of such properties as belong to or are held for the benefit of an enemy.

Section 5(a) of the Act provides that "The President may exercise any power or authority conferred by this act through such officer or officers as he shall direct." Section 6 authorizes him to appoint an Alien Property Custodian who is "empowered to receive all money and property in the United States due or belonging to an enemy." By Executive Order of October 12, 1917,

the President vested in the Alien Property Custodian, an officer appointed under the Act, "the executive administration of all the provisions of section 7(a), section 7(c) and section 7(d)" of the Act "including the power and authority conferred upon the President by the provisions of section 7(c)." By Executive Order of December 3, 1918, the President vested in such Custodian "the executive administration of all of the provisions of sub-section (c) of section 7" of the Act as amended by the Act of November 4, 1918.

The Custodian's demands upon the Trust Company were made under section 7(c) of the Act, the later demand after such subsection had been amended. As amended this subsection, so far as pertinent to the present inquiry, reads:

> "(c) If the President shall so require any money or other property including * * * choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered, and disposed of as elsewhere provided in this Act."

Section 7(e) provides:

> "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act."

By these excerpts it is manifest that the Custodian, as the representative of the President, had ample authority to determine, after investigation, whether property was held for or on behalf of an enemy, and to insist that such property be turned over to him, if held for an enemy. Stoehr v. Garvan, U. S. (decided Feb. 28, 1921). And the Trust Company will be fully protected on a compliance with the Custodian's demands. Garvan v. Marconi Wireless Telegraph Co. of America, Fed. . (decided by this Court on Sept. 20, 1921) and cases therein cited. However, while the making of such determinations and demands with reference to the properties in question is not disputed, it is insisted that the preliminary investigation required by the Act was not made. But this challenge is met by the positive assertion in the determinations and demands that investigation was made. This precludes any further inquiry in proceedings like the present, instituted under Section 17 of the Act, which are merely possessory. Central Union Trust Co. of N. Y. v. Garvan, U. S. . (decided Jan. 24, 1921); Stoehr v. Garvan, supra.

The Trust Company also claims that at most but a part of this property is owned by Mrs. von

Schierholz, and that a proper investigation would have revealed that fact. Under the trust agreement herein set out the Trust Company held the securities therein referred to and the interest money to be derived therefrom, in trust "for the joint account of the said Frederick Wesche and Helene J. von Schierholz," and it was obligated to deliver or pay over such securities and interest "to either the said Frederick Wesche or to the said Helene J. von Schierholz, or to the survivor of them." So far as the Trust Company was concerned, it made no difference what were the relative rights of the cestuis que trustent in and to these moneys and securities. It was bound to deliver them to either on demand. This being so, if either of these persons was an enemy within the meaning of the Trading with the Enemy Act, the Alien Property Custodian, by taking the requisite steps under the Act, which he did, would be substituted in the place of the enemy, and entitled to demand and recover the trust fund. By section 2 of this Act "any individual * * * of any nationality resident within the territory * * * of any nation with which the United States is at war" is an enemy within the meaning and purpose of the Act. This definition embraces Mrs. von Schierholz, for she was a resident of Germany which, at the time of the determinations and demands, was enemy territory.

The Trust Company concededly is but a trustee of these properties. Its contractual obligation to its cestuis que trustent was superseded by the duty cast upon it by the Trading with the Enemy Act. On the demands made by the Custodian it

was its duty to comply with them in every particular.

The question whether Wesche, or any other person other than Mrs. von Schierholz, has any title or interest in these moneys and securities, can be raised only by filing a claim and instituting the proceedings as provided by section 9 of the Act. Stoher v. Garvan, supra. American Exchange National Bank v. Garvan (C. C. A. 2), 273 F. 43. This section, as amended June 5, 1920 (long before the present suit was brought) amply protects the rights of claimants to properties taken over by the Alien Property Custodian, and a determination of such rights has no place in the present proceedings which, as noted, are purely possessory in character.

In the instant case the Trust Company's report to the Custodian showed that Mrs. von Schierholz was a resident of enemy territory, and that under the trust agreement she had a right to demand of the Trust Company that the moneys and securities in question be turned over to her. On that report alone the Custodian could justly determine that the properties were held for an enemy. Having so determined, his right to secure them can not be resisted or questioned by the Trust Company. This conclusion renders it unnecessary to consider any of the other grounds stated in the answer or briefs.

The rule is made absolute.

(Endorsed) Filed Oct. 22, 1921, at 9 o'clock A. M. George T. Cranmer, Clerk.

Order Substituting Thomas W. Miller for Original Petitioner.

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

FRANCIS P. GARVAN, as Alien Property Custodian,
Petitioner,

against

COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation,
Respondent.

In Equity.

In the Matter of the Application of Francis P. Garvan, as Alien Property Custodian, in re: certain stocks, bonds, securities and money alleged to be held by this respondent as the money and property of Helene J. von Schierholz, of Thurigen, Germany, an enemy.

FRANCIS P. GARVAN having ceased to be Alien Property Custodian and Thomas W. Miller having been duly appointed his successor as Alien Property Custodian and having duly qualified as such.

IT IS HEREBY ORDERED, that the said Thomas W. Miller as such Alien Property Custodian be, and

he hereby is, substituted as petitioner in this proceeding in place and stead of said Francis P. Garvan.

IT IS FURTHER ORDERED, that in all subsequent proceedings and papers herein the title of this proceeding be amended by inserting the name Thomas W. Miller in place and stead of the name Francis P. Garvan, wherever the same appears in such title.

Dated January 16, 1922.

JOHN RELLSTAB,
United States District Judge.

(Endorsed) Filed January 16, 1922. George T. Cranmer, Clerk.

Order Denying Application of Frederick Wesche.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

THOMAS W. MILLER, as Alien Property Custodian, Petitioner, against COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation, Respondent. Upon Application of Frederick Wesche for leave to intervene.	In Equity.

The above entitled matter came on to be heard before this Court regularly on its calendar on the 21st day of February, 1921, upon the petition of the above-named Frederick Wesche for leave to intervene in the proceeding instituted in this Court on the Equity side by Francis P. Garvan as Alien Property Custodian against the Commercial Trust Company of New Jersey instituted by the petition of said Garvan verified the 9th day of September, 1920, and by order to show cause issuing out of this Court, of date the 11th day of September, 1920, Selden Bacon, Esq., appearing as solicitor for said Wesche, and Elmer H. Geran and D. H. Stanley, Esqs., in opposition to said application on behalf of the Alien Property Custodian;

Order Denying Application of Frederick Wesche.

And Thomas W. Miller having succeeded said Francis P. Garvan as Alien Property Custodian, and having been substituted for him as petitioner in the said proceeding;

Now, upon reading and filing the said petition of Francis P. Garvan as Alien Property Custodian, and the order to show cause thereto annexed, and upon reading and filing the petition of the said Frederick Wesche for leave to intervene, and his proposed answer thereto annexed, and upon the order substituting Thomas W. Miller as Alien Property Custodian for the said Garvan as such, filed the sixteenth day of January, 1922, and after hearing Selden Bacon, Esq., on behalf of the petitioner in support of said application for leave to intervene and Frederick M. P. Pearce, Esq., on behalf of the Alien Property Custodian, in opposition thereto; and due consideration having been had, and upon the opinion filed upon this application by this Court and that filed by this Court in the proceeding between the Alien property Custodian and said Commercial Trust Company of New Jersey, in which the said Wesche as such petitioner so sought to intervene, it is hereby

ORDERED, that the application of said Wesche for leave to intervene in said proceeding be, and the same hereby is, denied.

January 16th, 1922.

JOHN RELLSTAB,
District Judge.

(Endorsed) Filed January 16, 1922. George T. Cranmer, Clerk.

Order Denying Motion to Strike Out Amended Answer.

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

THOMAS W. MILLER, as Alien Property Custodian,
Petitioner,

against

COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation,
Respondent.

In the Matter of the Application of Thomas W. Miller, as Alien Property Custodian, in re: certain stocks, bonds, securities and money alleged to be held by this respondent as the money and property of Helene J. von Schierholz, of Thurigen, Germany, an enemy.

In Equity.

The above entitled matter having come on for hearing before this Court on the 21st day of February, 1921, and the petitioner having then upon the petition and the amended answer and two documents introduced in evidence and upon the stipulation of the parties in open court admitting as facts in the case everything in the amended answer except as controverted by said

two documents, moved to strike out the amended answer of the Commercial Trust Company of New Jersey, and the Court having taken the matter of said motion under advisement, and Thomas W. Miller as Alien Property Custodian having thereafter been substituted as petitioner in place and stead of Francis Garvan, the Court on this 16th day of January, 1922, after hearing D. H. Stanley, Esq., and Frederic M. P. Pearse, Esq., on behalf of the petitioner, in support of the said motion, and Selden Bacon, Esq., on behalf of the respondent in opposition thereto, and due consideration having been had,

It is hereby ORDERED and DECREED That said motion to strike out be, and the same hereby is, denied.

Dated January 16th, 1922.

JOHN RELLSTAB,
United States District Judge.

(Endorsed) Filed January 16, 1922. George T. Cranmer, Clerk.

Final Decree.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

THOMAS W. MILLER, as Alien Property Custodian,
Petitioner,

—vs—

COMMERCIAL TRUST COMPANY OF NEW JERSEY,
Respondent.

This cause coming on to be heard on the 21st day of February, 1921, upon a rule to show cause directed to the COMMERCIAL TRUST COMPANY OF NEW JERSEY, said rule having been issued pursuant to a petition filed by FRANCIS P. GARVAN as Alien Property Custodian; upon such petition and upon an amended answer in the nature of a return to the said rule filed by the COMMERCIAL TRUST COMPANY OF NEW JERSEY; and upon the documents then introduced in evidence on the part of the petitioner and the stipulation of admission made in open court as to the allegations and denials of the answer except as controverted by such documents; and the motion of the petitioner to strike out the amended answer having been denied; and upon the argument of counsel made on behalf of FRANCIS P. GARVAN, as Alien Property Custodian, and of counsel for the COMMERCIAL

TRUST COMPANY OF NEW JERSEY, and THOMAS W. MILLER, as Alien Property Custodian, having been substituted as petitioner in place and stead of said GARVAN, by Order and Decree of this Court of January 16th, 1922; and thereupon further argument having been had, now upon motion of the Petitioner D. H. Stanley, Esq., and Frederic M. P. Pearse, Esq., appearing for the Petitioner and Selden Bacon, Esq., for the Respondent, and full consideration having been had; upon the said Rule to Show Cause and Petition and Amended Answer thereto and upon such documents and stipulation, and all other the proceedings herein; and upon the said order of substitution, and the opinions of this Court herein,

IT IS ADJUDGED, ORDERED AND DECREED that the Commercial Trust Company of New Jersey do forthwith convey, transfer, assign, deliver and pay to THOMAS W. MILLER as Alien Property Custodian, all of the money and other property held by it under a certain trust agreement entered into on January 30, 1913 by and between the COMMERCIAL TRUST COMPANY OF NEW JERSEY of the one part and FREDERICK WESCHE and HELENE J. v. SCHIERHOLZ of the other part (a list of the moneys held on October 1st, 1920 under the said trust and of the other property held under the said trust on February 21st, 1921, being annexed hereto marked Exhibit "A" and made a part hereof) together with the interest and income realized upon the cash so held in the said trust from October 1st, 1920 and any accretions thereto from October

Exhibit A—Annexed to Final Decree.

1st, 1920 to February 21, 1921 and interest and income of any kind or description whatsoever secured upon the said other property since February 1st, 1921.

Done this 19th day of January, 1922.

JOHN RELLSTAB,
United States District Judge.

Exhibit A.

Cash on Hand October 1, 1920.

In the Trust Account	$12,924.29	
" " "	8,862.16	
" " "	19,063.99	
" " "	20,732.69	
Total		$61,583.83
In the Checking Account	12,438.46	
" " "	11,624.45	
" " "	8,345.31	
" " "	8,588.59	
Total		$40,996.81
Grand Total		$102,580.64

Securities on Hand February 21, 1921.

$2,000.] Kings County Lighting Co. 5% 1st Refdg.
$5,000.} Mtge. Gold Bonds, Nos. 2131-4, 2137-41,
$3,000.] 2354.

Exhibit A—Annexed to Final Decree.

$3,000. } Adirondack Electric Power Corporation
$7,000. } 1st Mtg. 5% Gold Bonds, Nos. 3949-52, 4156-9, 4126-7.

$5,000. } Hudson Navigation Co. 6% Gold Mtge.
$5,000. } Bonds Nos. 116-8, 605-6, 1143-7.

$15,000. Suncrest Lumber Company Bonds.

$15,000. { $5,000 { $5,000 }

$5,000 } The Duluth Street Ry. Co. 5% 1st Mtge.
$5,000 } Gold Bonds, Nos. 1-5, 1082-1091, 2069.
$6,000 }

$24,000 } Central Georgia Power Co. 1st Mtge. S. F.
$5,000 } 5% Gold Bonds, Nos. $500. Bond D2912-
$6,000 } 31, $1,000, Bond M1927-56.
$5,000 }

$6,000 Fonda, Johnstown & Gloversville R. R. Co. 1st Con. Genl. Refg. Mtge. 4½% Gold Bonds, Nos. 2360-5.

$9,800. } U. S. of America 4% Second Liberty
$8,000 } Loan Bonds.

$16,700. { $18,700. }

$5,000. } Omaha Water Works of the City of
$5,000. } Omaha, Nos. 7058, 7025-33.

$7,000. } Tacoma Eastern R. R. Co. 1st Mtge. 5%
$2,000. } Gold Bonds Nos. 462-470.

$28,000. City of Chicago, City Hall, 4% Bonds, Nos. 1611-9, 1676-82, 2297-8, 2489-95, 2528-30.

$5,000. Montreal Tramways Co. 1st & Refdg. 5% Gold Bonds, Series A, Nos. 4116-20.

Exhibit A—Annexed to Final Decree.

$5,000. Gulf & Ship Island R. R. Co. 1st Mtge.
$5,000. Refdg. & Terminal 5% Gold Bonds, Nos. 311-3, 320, 456-8, 780-1, 1817.
$5,000. City of Memphis Bonds (4¼%)
$11,000 City of Memphis Bonds (4½%)
$5,000 Norfolk Southern R. R. Co. 1st & Refdg. Mtge. 5% Bonds Series A, Nos. M 1386-90.
$10,000. City of Jersey City Water 4½% Gold
$10,000. Bonds Nos. 2165-74, 2176-85.
$5,000. Westchester Lighting Co. 1st Mtge. 5%
$5,000. Gold Bonds, Nos. 3411-3, 3769-71, 5811-4.
$42,000. Corporate Stock of the City of New York
$83,000. Nos. 2270-2273, 2265-2368, 2375, 2398, 2716, 2722, 2724-2726, 7700-7714, 7742, 10521-10525; 80-2, 151-3, 156-7, 10143-52, 10415-18, 10420-7 v3 under all Nos.; for the extension of Riverside Drive Nos. 25520-4; for the payment of assessments Nos. 30008-12; to provide for the supply of water Nos. 655-698.
$10,000. City of Los Angeles Water Works, 4½% bonds Class F, Nos. 9522-6, 11349-53.

(Endorsed)—Filed Jan. 19, 1922 at 9 o'clock A. M.

GEORGE T. CRANMER,
Clerk.

Assignments of Error.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

THOMAS W. MILLER, as Alien Property Custodian,
Petitioner,

against

COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation,
Respondent.

IN THE MATTER
of the
Application of THOMAS W. MILLER, as Alien Property Custodian, *in re*: certain bonds, stocks, securities and money in the hands of the Respondent.

IN THE MATTER
of the
Application of the petitioner, FREDERICK WESCHE for leave to intervene and answer.

ASSIGNMENTS OF ERROR BY FREDERICK WESCHE.

The above named Frederick Wesche, petitioner for leave to intervene and petitioner for leave to appeal from the order refusing him leave to intervene, hereby assigns the following errors as grounds for his appeal in the above entitled matter:

Assignments of Error.

1. The Court erred in refusing leave to this petitioner to intervene and answer in the cause.

2. The Court erred in making the order and decree appealed from for such order and decree is in conflict with the provisions of the Fourth and Fifth Amendments to the Constitution of the United States prohibiting unreasonable seizures and prohibiting deprivation of property without due process of law and prohibiting the taking of private property for public use without just compensation and is not within the provisions of any rules authorized to be made by Congress concerning captures on land or water by the provisions of Section 7 of Article X of the Constitution of the United States.

3. The Court erred in holding that the proceeding of the Custodian was a merely possessory one grounded on the previous demands Exhibits B and C of the original petition of the Custodian.

4. The Court erred in holding that the statement in the demand, Exhibit B of the petition, that the Custodian Palmer had determined the ownership of the property in question after investigation, precluded inquiry in the present proceeding as to whether the investigation required by law had been made by the Custodian prior to such determination.

5. The Court erred in holding that the statement in the demand, Exhibit C of the petition, that the Custodian Garvan had determined the

ownership of the property in question after investigation, precluded inquiry in the present proceeding as to whether the investigation required by law had been made by the Custodian prior to such determination.

6. The Court erred in holding that the annexing of the document Exhibit B to the petition of the Custodian was equivalent to an allegation that the Custodian had determined the ownership of the property in that document described after investigation.

7. The Court erred in holding that the annexing of the document Exhibit C to the petition of the Custodian was equivalent to an allegation that the Custodian had determined the ownership of the property in that document described after investigation.

8. The Court erred in holding that, as against this petitioner for leave to intervene, a neutral resident in Switzerland throughout the period from August, 1914, till and at the presentation of his petition for leave to intervene herein, the Trading with the Enemy Act, as it stood prior to the amendment thereof by the Act of the 11th day of July, 1919, was constitutional and valid so far as to give to determinations by the Alien Property Custodian made prior to July 11th, 1919, that property owned by this petitioner for leave to intervene belonged to another person deemed an enemy by the Custodian, the effect

of barring this petitioner from a right to be heard in this equity proceeding by the Custodian to secure delivery to himself of property belonging to this petitioner and in the custody of the respondent Trust Company.

9. The Court erred in holding that any demand made by the Custodian for the delivery of property belonging to an American citizen not resident within any judicial district of the United States made prior to the amendment of July 11th, 1919, of that Act had any validity or constituted due process of law.

10. The Court erred in holding that the provisions of the Trading with the Enemy Act as it existed prior to the amendment of July 11th, 1919, were constitutional and valid as against this appellant (a neutral not resident at any time between August, 1914, and January 3, 1922, within any judicial district of the United States, but resident throughout said period in Switzerland), to the extent that demands thereunder made by the Custodian for property belonging to this appellant upon a determination by the Custodian made prior to July 11th, 1919, that they belonged to an enemy, could be subsequently validated and a possessory proceeding maintained based on such prior determination, by virtue of the amendment of the Trading with the Enemy Act by the Act of Congress of July 11th, 1919; and in holding that such Act of July 11th, 1919, so construed was constitutional and valid.

Assignments of Error.

11. The Court erred in holding that the statement in the demand, Exhibit B of the petition, that the Custodian Palmer had determined the ownership of the property in question after investigation precluded inquiry in this present proceeding on the application of this appellant, (a neutral who at the time of the making of said demand was and ever since has been a resident of Switzerland, and a neutral throughout the war), as to whether the investigation required by law had been made by the Custodian prior to such pretended determination.

12. The Court erred in holding that the statement in the demand, Exhibit C of the petition that the Custodian Palmer had determined the ownership of the property in question after investigation precluded inquiry in this present proceeding on the application of this appellant (a neutral who at the time of the making of said demand was and ever since has been a resident of Switzerland and a neutral throughout the war), as to whether the investigation required by law had been made by the Custodian prior to such pretended determination.

13. The Court erred in holding that the statement in Exhibit B of the original petition that the determination therein alleged had been made after investigation was tantamount to an allegation that it had been so made.

14. The Court erred in holding that the statement in Exhibit C of the original petition that the determination therein alleged had been made after investigation was tantamourt to an allegation that it had been so made.

15. The Court erred in holding that the making of the determination specified in Exhibit B was not disputed.

16. The Court erred in holding that the making of the determination specified in Exhibit C was not disputed.

17. The Court erred in holding that the allegations of the proposed answer of this petitioner for leave to intervene did not state a valid defense to the proceeding.

18. The Court erred in holding that amendments of the Trading with the Enemy Act passed subsequent to the making of both of the demands set up in the petition as Exhibits B and C thereof respectively could cure the constitutional invalidity of said demands and of the Act of Congress under which they were made existing at the time they severally were made, without a new determination and demand by the Alien Property Custodian after the passage of such amendments.

19. The Court erred in holding that after the declaration of war by the United States on April 6th, 1917, the Trust Company had any power or authority to deliver any part of the property in

question to Helene von Schierholz by virtue of the terms of the agreement of deposit.

20. The Court erred in holding that the Alien Property Custodian could lawfully in this proceeding assert greater rights over the property in question in the right of Mrs. von Schierholz than Mrs. von Schierholz could lawfully have done in the absence of war, in her own right.

21. The Court erred in holding that the Trust Company's report showed that under the trust agreement Mrs. von Schierholz at any time after April 6th, 1917, had a right to demand of the Trust Company that the moneys or securities in question or any thereof be turned over to her other than such as were her individual property.

22. The Court erred in holding that on the report alone Exhibit A of the petition, the Alien Property Custodian could justly determine that the properties in question were all held for an enemy, without other investigation.

23. The Court erred in holding that a determination of ownership of property by the Custodian, made without evidence to support it, with notice that it was contrary to the real ownership, with notice where exact evidence of the ownership could be obtained, and made without inquiry and without investigation of the real ownership, and in fraud of the rights of the real owner, prevents any resistance to or questioning of such determination in a court of equity by

such owner or his bailee in possession of the property when the Custodian appeals to such a court for its aid in securing delivery of the property to him; and in holding that the Trading with the Enemy Act of 1917 so construed is constitutional and not within the prohibitions of the V Amendment to the Constitution of the United States.

24. The Court erred in holding that a Court of Equity should order property turned over to the Alien Property Custodian that he under undisputed facts had no lawful right to hold, without allowing to the real owner of the property any opportunity of asserting his rights thereto.

25. The Court erred in holding that the property of persons other than enemies is the subject of capture, when not in actual hostile use against the United States, or within a region where active hostilities are being conducted.

26. The Court erred in holding that property, several identifiable parts of which were owned by citizens or neutrals in severalty, and only a severable part by enemies, was subject to capture as a single item of property.

27. The Court erred in holding that a deposit of property, made years before the war was declared in the joint names of an enemy and a neutral, with stated power to either to withdraw it, was subject to capture, by virtue of that fact alone, as enemy property in its entirety, irrespec-

tive of the actual ownership of the several parts thereof, and of the several individual personal ownership by such neutral of a several part thereof, without prior investigation of the real ownership by the Custodian.

28. The Court erred in holding that where personal property had been deposited with a bailee, under an ante-bellum contract running to an enemy and a neutral with express power to either to withdraw the property from deposit, such fact alone after the declaration of war, irrespective of notice of the real ownership of the property by persons not enemies, justified a determination that the property was held for an enemy.

29. The Court erred in holding that a Court of Equity should order the property in question, or any thereof, turned over to the Alien Property Custodian as the property of Mrs. von Schierholz, when he was by law required to return to her any property of hers seized by him, without prior application by her, under and by virtue of the provisions of Section 9 of the Trading with the Enemy Act, Subdivisions b-3 and b-8 as amended by the Acts of Congress of June 5, 1920 and February 27th, 1921, she having been born a citizen of the United States, and having lost her citizenship solely by her marriage to a German subject prior to 1914, and having derived whatever rights of ownership she had in the property from her father, an American citizen, and having acquired whatever rights or powers or interests she had therein long prior to August 1st, 1914.

Assignments of Error.

30. The Court erred in refusing to consider any of the objections specified in and by the proposed answer of this petitioner to the relief prayed by the Alien Property Custodian.

31. The Court erred in refusing to find that at the time of each of the demands set forth in the petition as Exhibits B and C thereof respectively the provisions of Sec. 7 of the Trading with the Enemy Act were unconstitutional and invalid so far as they ordered the seizure or capture by the Custodian of the property of a neutral not resident within any judicial district of the United States such as was this petitioner.

32. The Court erred in refusing to hold the demand set forth in the original petition as Exhibit B thereof void as not constituting due process of law.

33. The Court erred in refusing to hold the demand set forth in the original petition as Exhibit C thereof void as not constituting due process of law.

33a. The Court erred in failing to hold the provisions of the Trading with the Enemy Act, authorizing seizure by the Alien Property Custodian of money or property not belonging to enemies or allies of enemies and aid of the Courts in securing delivery of such property to him, unconstitutional in the absence of provision for payment of either interest or damages for the period of detention of such property before return.

Assignments of Error.

34. The Court erred in holding that the amendment of the Trading with the Enemy Act by the Act of July 11th, 1919, passed after the demands made and after any pretended determination of ownership by the Custodian (whether with or without prior investigation) but prior to the institution of this proceeding in equity, by the Custodian cured any original invalidity in such demands, and authorized award of the possession of the property in question to the Alien Property Custodian on the petition here, which contains no allegation of any subsequent determination of the ownership by the Alien Property Custodian without investigation by the Court of the claims of ownership to part of the property of this petitioner for intervention and for leave to appeal.

35. The Court erred in holding that the Amendatory Act of Congress of July 11th, 1919, amending the Trading with the Enemy Act (as construed by the Court as validating a demand by the Custodian, for property of a neutral, made before the passage of such amending act and rendering it conclusive in this proceeding against the rights of a neutral owner of the property demanded) was constitutional and valid and not within the prohibitions of the V Amendment to the Constitution of the United States forbidding depriving any person of his property without due process of law.

36. The Court erred in holding that an amendment of the Trading with the Enemy Act, enacted by Congress subsequent to the making of both

the demands set up in the petition, as Exhibits B and C thereof, could cure a constitutional invalidity of the Trading with the Enemy Act as it existed at the time the said demands severally were made, and validate such prior demands and pretended determinations, without a new determination and demand made by the Alien Property Custodian according to law after the passage of such amendment; and in holding that such amendment could constitutionally have such effect in spite of the provisions of the V Amendment to the United States Constitution.

37. The Court erred in holding that the question whether this petitioner has any title or interest in the moneys or securities which were the subject of the original petition herein could be raised only by his filing a claim and instituting proceedings as provided by Section 9 of the Trading with the Enemy Act.

38. The Court erred in holding that a Court of Equity cannot in a proceeding like the present consider the rights of claimants to the property which was the subject of the proceeding as a condition of granting relief to the original petitioner.

39. The Court erred in holding that a Court of Equity will entertain a purely possessory proceeding without regard to the equities and rights of the owners of the property.

40. The Court erred in holding that the Alien Property Custodian did not by applying to a Court

of Equity for relief waive the right to obtain possessory award otherwise than upon equitable considerations and conditions.

41. The Court erred in holding that the Custodian was entitled to relief from the Equity Court of a possessory award of the property without meeting the requirements of equity as to doing equity.

42. The Court erred in holding that it could direct a delivery to the Custodian as successor to the right of Mrs. von Schierholz which it would have been a breach of trust for her to demand.

43. The Court erred in holding that after the declaration of war by the United States on April 6, 1917, the Trust Company had any power or authority to deliver the property in question (other than so much thereof as was individually owned by her) to Helene von Schierholz by virtue of the terms of the agreement of deposit.

44. The Court erred in failing to hold that the petitioner, the Custodian (by instituting his proceeding in equity by order to show cause, if any there be, why the property should not be turned over and assigned to the Custodian and by omitting from his petition any allegations that he had, after investigation thereof, determined the ownership of the property in question) had sought a determination by the Court of the ownership of the property after hearing the evidence of persons interested concerning such ownership, and

had thereby opened the door for the allowance of the petition of this petitioner for leave to intervene and set up his rights of ownership in the property and for a determination thereon.

45. The Court erred in holding that the refusal to permit this appellant to intervene was not in conflict with the provisions of the V Amendment to the Constitution of the United States providing that no person shall be deprived of property without due process of law.

46. The Court erred in holding that the Trading with the Enemy Act in so far as it authorized seizure of private property, not in use in hostility to the United States and not within any area of actual hostilities, belonging to this petitioner who was not an enemy of the United States but a neutral who did not reside in any judicial district of the United States, was, prior to the amendment of July 11th, 1919, constitutional and valid.

47. The Court erred in holding that a Court of Equity would give its assistance to the Alien Property Custodian by requiring property to be turned over to him as the property of Mrs. von Schierholz at a time when surrender to her by him even without prior application by her, of all property belonging to her, was on the undisputed facts provided for by law, and in refusing to permit this petitioner to intervene under such circumstances to assert his own claim to the property.

48. The Court erred in holding that a Court of Equity should order property turned over to the Alien Property Custodian that he on the conceded facts had no lawful right to hold.

49. The Court erred in failing to hold that the petitioner had not alleged that any determination of the ownership of the property had been made by either Mr. Palmer or by Mr. Garvan as Alien Property Custodian after investigation.

50. The Court erred in holding the original petition of the Custodian sufficient to entitle such petitioner to relief otherwise than in accordance with the actual ownership of the property and without allowing this petitioner for leave to intervene to do so and present his claims to the property.

51. The Court erred in holding that this defendant could be deprived of his property without due process of law.

52. The Court erred in holding that the demand of the Alien Property Custodian Palmer (Exhibit B of the original petition) constituted due process of law.

53. The Court erred in holding that the demand of the Alien Property Custodian Garvan (Exhibit C of the original petition) constituted due process of law.

54. The Court erred in refusing to find that at the time of each of the demands set forth in the petition as Exhibits B and C thereof respectively the provisions of Section 7 of the Trading with the Enemy Act were unconstitutional and invalid so far as they authorized the seizure by the Custodian of property of American citizens not resident in any judicial district of the United States and not enemies or allies of enemies, or of neutrals not resident within any judicial district of the United States, such as Charles J. Ahrenfeldt and Frederick Wesche were respectively admitted to be.

55. The Court erred in failing to hold that upon this appellant's application for leave to intervene all matters of fact alleged by him in his proposed answer annexed to his petition must be deemed true.

56. The Court erred in holding that a Court of Equity was bound to exercise its special powers in favor of the Alien Property Custodian contrary to the real and equitable rights of this appellant, refusing this appellant leave to intervene and without allowing him to be heard.

57. The Court erred in holding constitutional and valid the provisions of the Trading with the Enemy Act which authorize seizure by the Custodian of private property belonging to persons not enemies and which was not in actual military use against the United States or within any area of actual hostilities as against this petitioner for leave to intervene, who is and was a neutral and

has not been resident within any judicial district of the United States at any time since January 1st, 1914.

58. The Court erred in holding that the demand Exhibit B of the petition was a lawful exercise of the right of capture under Clause 11 of Section 8 of Article I of the Constitution of the United States.

59. The Court erred in holding that the demand Exhibit C of the petition was a lawful exercise of the right of capture under Clause 11 of Section 8 of Article I of the Constitution of the United States.

60. The Court erred in holding that the provisions of Section 7 of the Trading with the Enemy Act, prior to the amendment of July 11th, 1919, were, so far as they authorized the seizure or capture of property belonging to persons not enemies or allies of enemies of the United States and not resident within any judicial district of the United States, a valid exercise of the power "to make rules concerning captures on land and water" conferred by Clause 11 of Section 8 of Article I of the Constitution of the United States; and not in conflict with the prohibitions contained in the IV and V Amendments to the United States Constitution.

61. The Court erred in holding that a purely possessory proceeding could be maintained by the

Alien Property Custodian under the provisions of the Trading with the Enemy Act and the amendments thereof to obtain possession of property not actually belonging to an enemy or ally of enemy and not in use in hostility to the United States in the absence of an actual determination (after investigation) by the Custodian, authorized by law at the time it was made, of the ownership of such property, on the ground that the Custodian might have made such a determination on the papers submitted to him.

62. The Court erred in holding that the right of capture or seizure, in the case of property owned in severalty, part by one not an enemy or ally of enemy of the United States, and part by an enemy, could notwithstanding the prohibitions of the V Amendment to the Constitution of the United States extend beyond the part or share belonging to the enemy.

63. The Court erred in ruling that under the trust agreement either Mrs. von Schierholz or Wesche could demand the possession of the properties therein covered.

64. The Court erred in holding that it was the duty of the Trust Company to comply with the demands of the Alien Property Custodian and turn over all the property demanded to him, and that this appellant had no right to be heard.

65. The Court erred in holding that the question of other persons' ownership or interest in the

properties demanded was irrelevant in this proceeding.

66. The Court erred in holding that no questions arising out of the rights of this appellant in and to property which was the subject of the proceeding can be raised save after the demands of the Alien Property Custodian, Exhibits B and C, have been complied with and then only by instituting proceedings authorized by Section 9 of the Trading with the Enemy Act as amended.

67. The Court erred in awarding custody of the property or any thereof as the property of Helene von Schierholz to the Alien Property Custodian after the enactment of the Act of Congress of February 27th, 1921, amending the Trading with the Enemy Act, without hearing this appellant.

68. The Court erred in awarding custody of the property of this appellant or any thereof to the Alien Property Custodian after the declaration of peace with Germany, and after the exchange of ratifications of the treaty of peace.

69. The Court erred in holding that this proceeding was a possessory one, when the demands Exhibits A and B of the original petition were both void because made under a statute which was unconstitutional, at the time they were made, as to the owners of parts of the property involved, to-wit, this appellant, Frederick Wesche, a neutral resident at all times since 1914 in Switzer-

land and Charles J. Ahrenfeldt (whose property had been entrusted to this appellant by him), an American citizen resident at the times when said demands were each made in London, as providing for seizure of property of persons not enemies without due process of law.

70. The Court erred in holding that the Custodian could dispense with the duty of investigation, before determination by him of ownership of property under the provisions of the Trading with the Enemy Act, and in holding that the Trading with the Enemy Act so construed was constitutional in so far as it authorized capture or seizure of property not owned by an enemy or ally of enemy and not in actual hostile use against the United States or within a region where hostilities were being actively conducted, and that it was not so construed, in such cases, in conflict with the provisions of either the IV or V Amendments to the United States Constitution.

71. The Court erred in holding that a Court of Equity was bound to exercise its special powers in favor of the Alien Property Custodian in this proceeding without hearing this appellant or considering his rights or the invalidity of the asserted proceedings by him, or the constitutionality of the provisions of the Trading with the Enemy Act of October, 1917, authorizing seizure of the private property of this appellant, a neutral and not an enemy or ally of enemy, not residing within any judicial district of the United States, and to whom all opportunity of revision

of any such seizure in any Court was expressly refused.

72. The Court erred in holding constitutional and valid the provisions of the Trading with the Enemy Act which authorize seizure by the Custodian of private property belonging to persons not enemies or allies of enemies and which was not in actual military use against the United States or within any area of actual hostilities.

73. The Court erred in directing delivery, after the proclamation of peace and ratification of the treaty of peace of the property of this appellant to the Alien Property Custodian under demands or determinations made by the Custodian prior to July 11th, 1919.

74. The Court erred in directing delivery to the Alien Property Custodian in this proceeding of any property which was admittedly not the property of Helene J. von Schierholz and had not been.

75. The Court erred in holding that the Act of Congress of July 11th, 1919, could constitutionally (and in disregard of the V Amendment of the Constitution of the United States) operate, retroactively, to validate provisions of the Trading with the Enemy Act of October 6th, 1917, unconstitutional when adopted, as of a time prior to the enactment of such amendment and to validate acts attempted to be done under such unconstitutional provisions prior to the enactment of such Act of July 11th, 1919.

Assignments of Error.

76. The Court erred in holding that the right of capture or seizure, in the case of property owned in severalty, part by one not an enemy or ally of enemy of the United States, and part by an enemy, could extend beyond the part or share belonging to the enemy.

77. The Court erred in holding the Trading with the Enemy Act constitutional in so far as it permitted capture or seizure of property on land not belonging to an enemy or ally of enemy, and not in use against the United States, and not within any region in which hostilities were being actively conducted.

78. The Court erred in holding that it was the duty of the Trust Company to comply with the demands of the Alien Property Custodian and turn over all the property demanded to him.

79. The Court erred in holding that, after the passage of the joint resolution of Congress declaring the state of war between the Imperial German Government and the United States of America at an end and its approval and signature by the President of the United States on July 2nd, 1921, the Alien Property Custodian had any power, right or authority to reduce to his possession as such Custodian by virtue of the Trading with the Enemy Act and any amendments thereof, any property previously demanded by him as that of Germans, but not actually previously delivered into his possession as such Custodian, other than property actually belonging to the Imperial Ger-

man Government, or its successor or successors or to German Nationals.

80. The Court erred in holding that after the signature and ratification of the treaty with Germany of date August 25th, 1921, and the exchange of ratifications thereof between the two governments, the Enemy Property Custodian had any power, right or authority to reduce to his possession as such Custodian, by virtue of the Trading with the Enemy Act and any amendments thereof, any property previously demanded by him as that of Germans, but not actually previously delivered into his possession as such Custodian, other than property actually belonging to the Imperial German Government, its successor or successors, or to German Nationals.

81. The Court erred in failing to hold that, after the passage of the joint resolution of Congress declaring the state of war between the Imperial German Government and the United States of America at an end and its approval and signature by the President of the United States on July 2nd, 1921, and the proclamation of peace by the President of the United States, and the signature and ratification of the treaty of peace between the United States and Germany of date August 25th, 1921, and the exchange of ratifications of such treaty, the Alien Property Custodian could not by virtue of determination of enemy ownership of property by him and demand thereof accordingly maintain any possessory proceeding by virtue of the Trading with the Enemy Act and

the amendments thereof, to reduce to his possession as Alien Property Custodian any property, so previously demanded by him as property of German enemies of the United States, unless such property had actually belonged either to the Imperial German Government, or its successor or successors, or to German Nationals.

82. The Court erred in failing to hold that upon the termination of the war all right of capture or seizure under the provisions of the Trading with the Enemy Act and all right of completing capture or seizure attempted by demand of the property but not theretofore completed by actual reduction of the property to possession by the Custodian ceased and determined save and except only as to such property as was specifically excepted by the terms of the peace resolution of July 2nd, 1921, and by those of the treaty of peace with Germany of August 25th, 1921, namely, all property of the Imperial German Government, or its successor or successors, and of all German Nationals which had been the subject of a demand, and all property of the Imperial and Royal Austro-Hungarian government or its successor or successors and of all Austro-Hungarian Nationals, which had been the subject of such demand; and in failing to hold that, it appearing that part of the property herein sought to be recovered was not of such excepted character, no possession could be herein awarded to the Custodian of such property which did not and had not belonged to said Governments or any of them or to German or Austro-Hungarian Nationals.

Assignments of Error.

83. The Court erred in refusing to hold that the amendment of the Trading with the Enemy Act by the Act of July 11th, 1919 (as construed by it, as validating determinations and demands made by the Custodian prior to the enactment of such amendment as to which the provisions of the Trading with the Enemy Act as previously existent were unconstitutional) was invalid and unconstitutional, as in conflict respectively with the provisions of the Constitution of the United States; to wit, those of the Fifth Amendment to the Constitution of the United States, forbidding that any person be deprived of property without due process of law, and those forbidding the taking of private property for public use without just compensation and in conflict with the provisions of the Fourth Amendment to the Constitution of the United States forbidding unreasonable seizures.

84. The Court erred in holding that this proceeding was a possessory one, when the demands Exhibits A and B of the original petition were both void because made under a statute which was unconstitutional at the time they were made, as to the owners of parts of the property involved, to wit, Frederick Wesche, a neutral resident at all times since 1914 in Switzerland and Charles J. Ahrenfeldt, an American citizen resident, at the times when said demands were each made and since, outside of the United States in London, England and in Switzerland, as providing for seizure of property of persons not enemies without due process of law.

Assignments of Error.

85. The Court erred in making the order and decree directing the Commercial Trust Company of New Jersey, respondent in the original proceeding, forthwith to account for, convey, transfer, assign, deliver and pay to Thomas W. Miller as Alien Property Custodian the money and other property described and set forth in the petition of the Alien Property Custodian and as modified by the amended answer with any accretions thereon or changes therein, without first hearing and determining the claims and rights of this petitioner, Frederick Wesche to the same or parts theerof.

86. The Court erred in holding that a capture or seizure by the Custodian was completely effected of the property here in question before the exchange of ratifications of the treaty of peace, by the demands shown and the institution of this proceeding, without the actual reduction to his possession of the property or any part thereof.

87. The Court erred in holding that the stipulation in the treaty of August 25th, 1921, between the United States and Germany according to the United States the benefit of the provision in the joint resolution of Congress of July 2d, 1921, that all property of all German Nationals which had been the subject of a demand by the United States of America or of any of its officers, agents or employees should be retained by the United States of America and no disposition thereof made except as specifically provided by law, was (as construed by the Court as applicable to property

of individual German Nationals, which had been merely made the subject of a demand or demands by the Alien Property Custodian without actual reduction to possession or physical capture) constitutional and valid and not within the prohibitions of the V Amendment to the Constitution of the United States.

88. The Court erred in holding that the Joint resolution of Congress of July 2d, 1921, in so far as it authorized completion of uncompleted captures or seizures of private property after the conclusion of peace and the exchange of ratifications of the treaty of August 25th, 1921, was constitutional and valid and not within the provisions of the V Amendment to the Constitution of the United States forbidding that any person shall be deprived of his property without due process of law, and forbidding the taking of private property for public use without just compensation.

89. The Court erred in holding that the Trading with the Enemy Act, and the Amendments thereof, the Joint Resolution of Congress of July 2d, 1921, the Proclamation of Peace by the President of the United States, and the treaty of August 25th, 1921, and the exchange of ratifications thereof, all and severally, were constitutional and not within the prohibitions of the V Amendment to the Constitution of the United States forbidding the taking of private property for public use without just compensation, and forbidding that any person should be deprived of his property without due process of law, as the same

were construed by the Court as authorizing completion (as against individual owners), after the conclusion of peace, of captures or seizures by the Custodian of private property individually owned, not previously reduced to actual possession by him.

90. The Court erred in assisting a capture or seizure of individually owned private property by the Custodian after the conclusion of peace.

91. The Court erred in assisting a capture or seizure of individual private property, belonging to an American citizen, by the Custodian, after the conclusion of peace.

92. The Court erred in assisting a capture or seizure of individual private property belonging to one never an enemy or ally of an enemy, by the Custodian after the conclusion of peace.

93. The Court erred in refusing leave to this appellant to intervene and assert his rights to the property in question in this proceeding when it appeared that Helene J. von Schierholz, over whose rights alone the Custodian asserted any claim, was born a citizen of the United States and lost her citizenship solely by her marriage to a German subject prior to 1914, and that all rights of ownership she had in the property in question she had derived from her father, an American citizen, and long prior to August 1st, 1914.

94. The Court erred in holding that after the conclusion of the treaty of peace, the Alien Property Custodian was authorized to prosecute any proceeding for the purpose of reducing to his possession property not actually so reduced to possession prior to the conclusion of peace.

94a. The Court erred in failing to hold that the provisions of the Trading with the Enemy Act authorizing purely possessory proceedings by the Alien Property Custodian to recover possession of property which he had required to be delivered to him as enemy property, had become unconstitutional with the termination of the war.

95. The Court erred in holding that it had any jurisdiction to entertain a purely possessory proceeding by the Custodian after the conclusion of peace.

SELDEN BACON,
Solicitor and Counsel for Frederick Wesche, Petitioner for leave to intervene and for leave to appeal,
43 Exchange Place,
New York, N. Y.

(Endorsed) Service of a copy of within assignments of error hereby admitted this 19th day of January, 1922.

ELMER H. GERAN,
Solicitor for Custodian.

Filed Jan. 19, 1922, at 9 o'clock A. M.

GEORGE T. CRANMER,
Clerk.

Petition for Appeal and Allowance of Same.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

THOMAS W. MILLER, as Alien Property Custodian,
Petitioner,

against

COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation,
Respondent.

IN THE MATTER
of the
Application of THOMAS W. MILLER, as Alien Property Custodian, *in re*: certain bonds, stocks, securities and money in the hands of the Respondent.

IN THE MATTER
of the
Application of the petitioner, FREDERICK WESCHE for leave to intervene and answer.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY:

The above-named FREDERICK WESCHE, petitioner for leave to intervene in the above-entitled proceeding, conceiving himself to be aggrieved by the order and decree made and entered in the

above-entitled proceeding on the 16th day of January, 1922, denying his application for leave to intervene in such proceeding, does hereby appeal from said order and decree and from each and every part thereof to the Supreme Court of the United States for all and several the reasons specified in his assignment of errors which is filed and presented herewith.

And said Frederick Wesche prays that this his appeal may be allowed and that citation issue thereon as provided by law and that a transcript of the record and proceedings and papers upon which said order and decree was made duly authenticated may be sent to the Supreme Court of the United States.

And your petitioner further prays that the proper order touching the security to be required of your petitioner to perfect his said appeal be made.

SELDEN BACON,
Solicitor for Frederick Wesche,
Petitioner for leave to Appeal.

And now, to-wit, this 19th day of January, 1922, upon consideration of the foregoing petition, it is, on motion of Selden Bacon, Esq., solicitor for Frederick Wesche, the petitioner for appeal,

ORDERED by this Court, that the appeal prayed for therein be and the same hereby is allowed,

and the amount of the appeal bond to be entered by such petitioner is hereby fixed at the sum of $500.00.

Dated, January 19th, 1922.

JOHN RELLSTAB,
United States District Judge.

(Endorsed) Filed Jan. 19, 1922, at 9 o'clock A. M.

GEORGE T. CRANMER,
Clerk.

Service of copy of within petition for appeal and allowance hereby admitted this January 19, 1922.

ELMER H. GERAN,
Solicitor for Custodian.

Bond on Appeal.

DISTRICT COURT OF THE UNITED STATES OF AMERICA

FOR THE DISTRICT OF NEW JERSEY IN THE THIRD CIRCUIT.

THOMAS W. MILLER, as Alien Property Custodian,
Petitioner.

against

COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation,
Respondent.

In the Matter of the Application of Thomas W. Miller, as Alien Property Custodian, in re: certain bonds, stocks, securities and money in the hands of the Respondent.

IN THE MATTER

of the

Application of the Petitioner Frederick Wesche for leave to Intervene and Answer.

KNOW ALL MEN BY THESE PRESENTS:

That we, Frederick Wesche, as Principal and the United States Fidelity and Guaranty Company, a corporation organized and existing under

the laws of the State of Maryland, and duly authorized to transact business in the State of New Jersey, are held and firmly bound unto the above named Thomas W. Miller, as Alien Property Custodian, his successors and assigns, in the sum of Five Hundred ($500.) Dollars, to be paid to the said Thomas W. Miller, as Alien Property Custodian, his successors and assigns, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated the 17th day of January, 1922.

WHEREAS, the above named Frederick Wesche has prosecuted his appeal to the Supreme Court of the United States to reverse the order and decree made and entered on the 16th day of January, 1922 in the above entitled suit, in the District Court of the United States for the District of New Jersey.

NOW, THEREFORE, the condition of this obligation is such, that if the above named Frederick Wesche, shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall

be void, otherwise the same shall be and remain in full force and virtue.

FREDERICK WESCHE (Seal)
By SELDEN BACON.

UNITED STATES FIDELITY AND GUARANTY COMPANY
By JOHN B. GEYLER,
Attorney in fact.

(Corporate Seal)

Attest:
CHARLES VOLLHERBST,
Atty. in fact.

STATEMENT

UNITED STATES FIDELITY AND GUARANTY COMPANY,

BALTIMORE, MD.

At the Close of Business June 30, 1921.
Commenced Business August 1, 1896.

ASSETS.

Par Value.		*Market Value.*
$ 7,109,250.00	Government Bonds..	$ 6,685,957.23
5,537,271.15	Baltimore City and other Municipal, State and County Bonds	4,921,561.86

2,395,600.00	Railroad and Equipment Bonds.....	1,962,009.50
255,000.00	Electric Railway Bonds	181,350.00
4,096,658.22	Public Utility and Miscellaneous Bonds	3,623,238.25
315,890.00	Bank and Trust Company Stocks	619,060.00
165,400.00	Railroad Stocks.....	122,360.00
464,575.00	Miscellaneous Stocks.	324,603.00
100,000.00	Lawyers Surety Co. Stock, represented by $150,000 New York City Bonds deposited with the Superintendent of Insurance of the State of New York, and other assets...	123,500.00
$20,439,644.37	Total Bonds and Stocks — Market Values June 30th, 1921	$18,563,639.84
	Home Office Property appraised by Insurance Department of Maryland	750,000.00
	Other Property appraised by Insurance Department of Maryland....	76,582.72
	Home Office Addition.....	364,143.73
	New York Property, appraised by Insurance Department of New York	859,920.16
	Loans secured by pledge of Collaterals	48,762.84

Loans secured by Mortgages.....	53,300.00
Cash on Hand and in Depositories..	2,979,722.08
Premiums in course of collection, not more than three months due.....	7,283,694.92
Deposits with Workmen's Compensation Reinsurance Bureau.....	315,932.52
Interest due and accrued.....	256,678.58
Due for Subscriptions, Department Guaranteed Attorneys.....	68,511.01
Distributable Portion of Company's Insurance Premiums in course of collection on Coal Mines and Prohibited Risks, not over 3 months due	108,056.88
Other Assets	43,241.23
	$31,772,186.51

LIABILITIES.

Capital Stock paid in cash.....		$ 4,500,000.00
Due for Return Premiums and Reinsurance		134,091.09
Funds held under Reinsurance Treaties		34,642.78
Due Associated Companies		38,241.34
Reserve for 1921 Taxes and Expenses in Transit.....		272,112.22
Commissions accrued on uncollected premiums		1,342,891.86
Premium Reserve Computed in Accordance with Requirements of New York Insurance Department	$11,042,618.76	

Reserve for Claims Admitted and not Admitted, all Departments, in accordance with New York Laws.....	10,251,140.78	
Surplus	4,156,447.68	25,450,207.22
		$31,772,186.51

CHAS. O. SCULL,
Vice-President.

W. GEORGE HYNSON,
Treasurer.

STATE OF MARYLAND, }
CITY OF BALTIMORE, } SS.:

On this 30th day of July, 1921, before me, A. D. PATRICK, a Notary Public in and for the City and State aforesaid, personally appeared CHAS. O. SCULL and W. GEORGE HYNSON, Vice-President and Treasurer, respectively, of the UNITED STATES FIDELITY AND GUARANTY COMPANY, who, being by me severally duly sworn, did depose and say that they are such officers of the said Company, and that the above and foregoing is a full, true and correct statement of the Assets and Liabilities of the said Company, as they appeaerd upon the books of the said Company on the 30th day of June, A. D. 1921.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, the day and year aforesaid.

{NOTARIAL SEAL}

A. D. PATRICK,
Notary Public.

Bond on Appeal.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

On this seventeenth day of January, Nineteen Hundred and twenty-two, before me, the subscriber, personally came CHARLES VOLLHERBST, who, being by me duly sworn, on his oath says that he is one of the attorneys-in-fact of the UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation of the State of Maryland; that he resides in the City of Newark; that he knows John B. Geyler, the attorney-in-fact of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, signing the foregoing bond for the said Company; that he knows also the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal and was so affixed by the said attorney-in-fact; that the said instrument was signed by the said attorney-in-fact and attested by deponent as one of the attorneys-in-fact of said Company; by order of the Board of Trustees of said Company, in deponent's presence, as the voluntary act and deed of said Company; that the said Company has duly complied with all the requirements of Chapter 134 of of the laws of the State of New Jersey of the year 1902; that the good and available assets of the Company exceed its liabilities, as such liabilities are ascertained in the manner provided in said chapter; that the said UNITED STATES FIDELITY AND GUARANTY COMPANY is duly incorporated under the laws of the State of Maryland and is authorized by the laws of said State and under its charter to become surety on bonds and obligations

such as are mentioned in said chapter; that it has on deposit with the Treasurer of the State of Maryland Three Hundred Thousand Dollars in good securities, worth at par value at least that sum, and held for the benefit of the holders of the obligations of said Company; and deponent further says that the said Company has appointed Walter C. Schryver and John B. Geyler, its attorneys-in-fact, in the City of Newark; that said appointment was made by a certain power of attorney, of which the following is a true copy:

POWER OF ATTORNEY.

Know All Men by These Presents:

That the UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint Walter C. Schryver and John B. Geyler, of the City of Newark, State of New Jersey, its true and lawful attorneys in and for the State of New Jersey, for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of

Directors, hereby ratifies and confirms all and whatsoever either the said Walter C. Schryver or the said John B. Geyler may lawfully do in the premises by virtue of these presents.

IN WITNESS WHEREOF, the said UNITED STATES FIDELITY AND GUARANTY COMPANY, has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 21st day of May, A. D. 1914.

UNITED STATES FIDELITY AND GUARANTY COMPANY,

BY (Sig.) W. W. SYMINGTON,
Vice-President.

(Sig.) WM T. MORGAN,
Assistant Secretary.

[SEAL]

STATE OF MARYLAND }
BALTIMORE CITY, } SS.:

On this 21st day of May, A. D. 1914, before me personally came W. W. Symington, Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY, and Wm. T. Morgan, Assistant Secretary of said Company, with both of whom I am personally acquainted, who, being by me severally duly sworn, said that they resided in the City of Baltimore, Maryland; that they, the said W. W. Symington and Wm. T. Morgan, were respectively the Vice-President and Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COM-

PANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of said Company.

My commission expires the first Monday in May, A. D. 1916.

[SEAL]

(Sig.) WILLIAM J. MCFEELY, JR.,
Notary Public.

STATE OF MARYLAND } sct.:
BALTIMORE CITY, }

I, Stephen C. Little, Clerk of the Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that William J. McFeeley, Jr., Esq., before whom the annexed affidavits were made, and who has thereto subscribed his name, was, at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments or proofs of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Superior Court of Baltimore, City, the same being a Court of Record, this 21st day of May, A. D. 1914.

[SEAL]

(Sig.) STEPHEN C. LITTLE,
Clerk of the Superior Court of Baltimore City.

COPY OF RESOLUTION.

THAT WHEREAS, it is necessary for the effectual transaction of business that this Company appoints agents and attorneys with power and authority to act for it and in its name in States other than Maryland, and in the Territories of the United States and in the Provinces of the Dominion of Canada and in the Colony of Newfoundland,

THEREFORE BE IT RESOLVED, that this Company do, and it hereby does, authorize and empower its President or either of its Vice-Presidents in conjunction with its Secretary or one of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its act, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings, or by law allowed, and

Bond on Appeal.

ALSO in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are or may by law, municipal or otherwise, or by any Statute of the United States, or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland, or by the rules, regulations, orders, customs, practice or discretion of any board, body, organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed or recorded, for the security or protection of, by or for any person or persons, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities whatsoever, conditioned for the doing or not doing of anything or on any conditions which may be provided for in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, Wm. T. Morgan, Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, hereby certify that at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company, at the City of Baltimore, on the 11th day of July, A. D. 1910, at which was present a quorum of said Directors, duly authorized to act in the premises, resolutions were passed and entered on the minutes of said

Company, of which resolutions the foregoing is a true copy and of the whole thereof.

IN TESTIMONY WHEREOF, I hereunto set my hand and the seal of the UNITED STATES FIDELITY AND GUARANTY COMPANY, this 21st day of May, A. D. 1914.

(Sig.) WM. T. MORGAN,
Assistant Secretary.
(Seal) CHARLES VOLLHERBST.

Sworn and subscribed to before me this 17th day of January, A. D. 1922.

WALTER C. SCHRYVER,
Notary Public of New Jersey.

(Endorsed) The within undertaking is approved as to form and as to the sufficiency of the surety.

JOHN RELLSTAB,
Judge.

Service of copy acknowledged Jan. 19, 1922.

ELMER H. GERAN,
U. S. Atty., Solr. for A. P. C.

Filed Jan. 19, 1922, at 9 o'clock A. M.

GEORGE T. CRANMER,
Clerk.

Citation.

UNITED STATES OF AMERICA,

TO: THOMAS W. MILLER, as Alien Property Custodian, GREETING:

You are hereby notified that in a certain proceeding in equity in the United States District Court in and for the District of New Jersey wherein Francis P. Garvan, as Alien Property Custodian, was the original complaining petitioner and you have become complaining petitioner by substitution for him as his successor in said office as Alien Property Custodian, and wherein the Commercial Trust Company of New Jersey is respondent, an appeal has been allowed to Frederick Wesche, petitioner for leave to intervene therein from the decree therein entered in said District Court on the 16th day of January, 1922, denying his application for leave to intervene in said proceeding, to the Supreme Court of the United States.

You are hereby cited and admonished to be and appear in said Supreme Court of the United States at the Capitol in the City of Washington, in the District of Columbia, thirty days after the date of this citation, to show cause, if any there be, why the order and decree so appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Hon. John Rellstab, Judge of the United States District Court for the District of New Jersey this 19th day of January, A. D. 1922.

JOHN RELLSTAB,
United States District Judge.

(Endorsed) Filed Jan. 19, 1922, at 9 o'clock A. M. George T. Cranmer, Clerk.

Service of within citation hereby admitted this 19th day of January, 1922.

ELMER H. GERAN,
Solicitor for Custodian.

Docket Entries.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

THOMAS W. MILLER, as Alien Property Custodian —vs— COMMERCIAL TRUST COMPANY OF NEW JERSEY,	In Equity Case-No. 2652

Sept. 11, 1920,	Petition filed
" " "	Rule to show Cause why property &c. should not be delivered &c. filed.
" 20, "	Affidavit of Service of Petition and Rule filed.
Oct. 19, "	Answer filed
Feb. 21, 1921,	Appearance of Selden Bacon, Solr. for Frederick Wesche, Intervenor, filed.
" " "	Appearance of Selden Bacon, Solr. for Chas. J. Ahrenfeldt, filed.
" " "	Amended Answer of Commercial Trust Co. filed.
" " "	Hearing on motion for leave to intervene.
" " "	Hearing on Order to Show Cause why certain moneys and securities should not be turned over to Alien Property Custodian, Decision reserved.

Oct.	22,	" Petition of Frederick Wesche for leave to Intervene filed.
"	"	" Petition of Chas. J. Ahrenfeldt, for leave to Intervene, filed.
"	"	" Opinion filed.
"	"	" Memorandum filed.
Jan.	16, 1922	Order for Substitution of Alien Property Custodian filed
"	"	" Order denying Application of Frederick Wesche for leave to Intervene, filed
"	"	" Order denying Application of Chas. J. Ahrenfeldt for leave to Intervene filed.
"	"	" Order denying motion to strike out Amended Answer filed.
"	19,	" Final Decree for Complainant, filed.
"	"	" Assignments of Error by Frederick Wesche, filed.
"	"	" Petition for Appeal and Order allowing Appeal, filed.
"	"	" Bond on Appeal filed.
"	"	" Citation issued
"	"	" Citation returned, Service acknowledged. Copy filed.
"	"	" Assignments of Error by Chas. J. Ahrenfeldt, filed
"	"	" Petition for Appeal and Order allowing Appeal, filed
"	"	" Bond on Appeal filed.
"	"	" Citation issued.
"	"	" Citation returned, service acknowledged. Copy filed.

"	"	"	Assignments of Error by Commercial Trust Co. filed.
"	"	"	Petition for Appeal and Order allowing Appeal, filed.
"	"	"	Bond on Appeal filed.
"	"	"	Citation issued.
"	"	"	Citation returned, service acknowledged. Copy filed.
"	27,	"	Statement of all evidence and Proceedings at Hearing, filed.
"	"	"	Praecipe for Record on Appeal of Frederick Wesche, filed.
"	"	"	Praecipe for Record on Appeal of Chas. J. Ahrenfeldt, filed.
"	"	"	Praecipe for Record on Appeal of Commercial Trust Co. of N. J. filed.

Praecipe for Record.

DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

THOMAS W. MILLER, as Alien Property Custodian, Petitioner, against COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation, Respondent.	In Equity.
IN THE MATTER of the Application of THOMAS W. MILLER, as Alien Property Custodian, *in re*: certain stocks, bonds, securities and money alleged to be held by this respondent as the money and property of Helene J. von Schierholz, of Thurigen, Germany, an enemy. On application of Frederick Wesche for leave to intervene.	Praecipe for Record on Appeal of Frederick Wesche.

SIR:

PLEASE TAKE NOTICE that FREDERICK WESCHE, the appellant herein to the United States Supreme Court, hereby indicates the following portions of the record in the case of Thomas W. Miller as Alien Property Custodian against Commercial Trust Company of New Jersey, respondent, to be incorporated into the transcript on such appeal:

Praecipe for Record.

1. Petition of Francis P. Garvan, as Alien Property Custodian, filed September 11, 1920;

2. Rule to show cause thereon, issued and filed September 11, 1920;

3. Amended answer of Commercial Trust Company of New Jersey, filed by leave of Court on February 21, 1921;

4. Appearance of Selden Bacon as solicitor for Frederick Wesche, petitioner for intervention;

5. Petition of Frederick Wesche for leave to intervene and proposed answer of said Frederick Wesche;

6. Statement of evidence and proceedings at the hearings on the cause (to be settled);

7. Opinion of Judge Rellstab filed October 22, 1921, on applications of Frederick Wesche and Charles J. Ahrenfeldt for leave to intervene;

8. Opinion by Judge Rellstab filed October 22, 1921, on the main case of the Alien Property Custodian against the Commercial Trust Company of New Jersey;

9. Order filed January 16, 1922, substituting Thomas W. Miller as Alien Property Custodian

for Francis P. Garvan as Alien Property Custodian as petitioner herein;

10. Order denying petition of Frederick Wesche for leave to intervene;

11. Order denying motion of the Alien Property Custodian to strike out the amended answer of the Commercial Trust Company of New Jersey;

12. Final decree for the petitioner Thomas W. Miller as Alien Property Custodian against the Commercial Trust Company of New Jersey;

13. Assignments of error by Frederick Wesche, filed January 19, 1922;

14. Petition for appeal by Frederick Wesche and order allowing such appeal, filed January 19, 1922;

15. Bond on appeal of said Frederick Wesche and surety, filed January 19, 1922; and approval thereof.

16. Citation on such appeal to the United States Supreme Court, and admission of service thereof, filed January 19, 1922; including in each instance the file marks on such documents.

Praecipe for Record.

17. Transcript of the docket entries in the office of the Clerk of the District Court in the above proceeding.

18. This praecipe.

Yours respectfully,

FREDERICK WESCHE,
By SELDEN BACON,
His Solicitor.

To:
ELMER H. GERAN, Esq.,
Solicitor for Thomas W. Miller,
Alien Property Custodian, Appellee,
Trenton, New Jersey.

[Endorsed]

Service acknowledged Jan. 27, 1922.
ELMER H. GERAN,
U. S. Atty.

Filed Jan. 27, 1922, at 9 o'clock A. M.
GEORGE T. CRANMER,
Clerk.

Stipulation of Record.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

THOMAS W. MILLER, as Alien Property Custodian,
Petitioner,

against

COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation,
Respondent.

On application of Frederick Wesche for leave to intervene.

} In Equity.

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true, correct and complete transcript of the record of the said District Court in the above entitled matter and the same is agreed on by the parties, and includes all the papers specified in the praecipe for record on appeal.

Dated February, 14 1922.

SELDEN BACON,
Solicitor for Frederick Wesche,
Petitioner, for leave to intervene
and Appellant.

ELMER H. GERAN, U.S. atty by Frederic M. P.
Solicitor for Thomas W. Miller,
as Alien Property Custodian,
Original petitioner and Appellee.

Certification of Record.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

THOMAS W. MILLER, as Alien Property Custodian, Petitioner, against COMMERCIAL TRUST COMPANY OF NEW JERSEY, a corporation, Respondent. On application of Frederick Wesche for leave to intervene.	In Equity.

I, GEORGE T. CRANMER, Clerk of the District Court of the United States of America for the District of New Jersey, do hereby certify that the foregoing is a transcript of the record of the said District Court in the above entitled matter as agreed on by the parties as shown by their foregoing stipulation.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of Trenton, in the District of New Jersey, this 28 day of February, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-sixth.

GEORGE T. CRANMER,
Clerk of the District Court.

by Charles L. Chevrier

UNITED STATES OF AMERICA:

To Thomas W. Miller, as Alien Property Custodian, Greeting:

You are hereby notified that in a certain proceeding in equity in the United States District Court in and for the District of New Jersey wherein Francis P. Garvan, as Alien Property Custodian, was the original complaining petitioner and you have become complaining petitioner by substitution for him as his successor in said office as Alien Property Custodian, and wherein the Commercial Trust Company of New Jersey is respondent, an appeal has been allowed to Frederick Wesche, petitioner for leave to intervene therein, from the decree therein entered in said District Court on the 16th day of January, 1922, denying his application for leave to intervene in said proceeding, to the Supreme Court of the United States.

You are hereby cited and admonished to be and appear in said Supreme Court of the United States at the Capitol in the City of Washington in the District of Columbia, thirty days after the date of this citation to show cause, if any there be, why the order and decree so appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Hon. John Rellstab, Judge of the United States District Court for the District of New Jersey, this 19th day of January, A. D. 1922.

JOHN RELLSTAB,
United States District Judge.

[Endorsed:] United States District Court, District of New Jersey. Thomas W. Miller, as Alien Property Custodian, Petitioner, against Commercial Trust Company of New Jersey, a corporation, Respondent. In the Matter of the Application of Frederick Wesche for leave to intervene and answer. Citation on appeal to the Supreme Court. Selden Bacon, Solicitor for Appellant, 43 Exchange Place, New York City, N. Y.

Due service of within citation on appeal hereby admitted this 19th day of January, 1922.

ELMER H. GERAN,
Solicitor for Thomas W. Miller, as Custodian.

Endorsed on cover: File No. 28,747. New Jersey D. C. U. S. Term No. 792. Frederick Wesche, appellant, vs. Thomas W. Miller, as alien property custodian. Filed March 2d, 1922. File No. 28,747.

(6185)